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# RETIREMENT INSECURITY: 401(k) CRISIS AT ENRON

## HEARING

BEFORE THE

## COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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# CONTENTS



## WITNESSES

### Tuesday, February 5, 2002



### Alphabetical List of Witnesses

APPENDIX

# RETIREMENT INSECURITY: 401(k) CRISIS AT ENRON

**TUESDAY, FEBRUARY 5, 2002**

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The Committee met, pursuant to notice, at 9:40 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Levin, Akaka, Durbin, Cleland, Carper, Carnahan, Collins, and Voinovich.

## OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Good morning and welcome to today's hearing of the Senate Governmental Affairs Committee on "Retirement Insecurity: 401(k) Crisis at Enron." This is our second hearing on the lessons learned from the largest bankruptcy in American history.

Before I proceed, I do want to acknowledge the presence of and welcome our colleague from the House, Congresswoman Sheila Jackson Lee, who obviously represents the city in which the company is headquartered. I do not know how to give this man a title except he is a friend and just a great citizen of this country, a leader in so many causes, the Reverend Jesse Jackson. We are honored to have you here.

Though for most of us, the damage caused by Enron's collapse becomes clearer every day, with every additional revelation. For Enron employees and retirees themselves, the consequences were crystal clear from the day the company crumbled. They lost their savings. Their nest eggs evaporated. They lost trust in the system, in both the personal and fiscal senses of the word "trust." And today, millions of other workers around the country who have been following the sad stories of Enron's employees have grown anxious about their own 401(k) accounts and their own retirement security.

So in today's hearings, we will ask exactly what happened to Enron employees' 401(k)'s and what can and should be done to safeguard similar investment accounts for the more than 42 million Americans who depend on them for their retirement. That is 42 million Americans with 401(k)'s.

First, let me try to put the Enron 401(k) story into some historical context. Most Americans used to count on traditional defined benefit pension plans in addition to their Social Security benefits to support them in retirement. In those plans, employee retirement funds are pooled and invested by a professional manager and a fixed monthly pension is paid out to the employee once he or she retires. It is pretty much guaranteed.

The Federal Government recognized the central roles these plans played in the lives of American workers, and in 1974, Congress enacted major legislation called ERISA, the Employee Retirement Income Security Act, to protect pension investments and safeguard them from abuse.

In the early 1980's, private retirement plans underwent an evolution which really became a revolution, as the 401(k) defined contribution plan was developed and encouraged by the Federal Government, which offers tax deferrals to both employees and employers who put money into 401(k)'s. For many workers, this was a very welcome innovation. The 401(k) offers a number of investment options, including mutual funds and stocks. The money an employee pays into it ultimately becomes theirs to control. Also, it is portable, which, of course, is important in our increasingly mobile economy.

But, unlike the traditional pension plans, which are guaranteed with a set monthly amount, 401(k)'s can rise with their investments, but, of course, they can also fall. In the bull market we experienced for much of the 1990's, it may have seemed to most Americans that any money put into a 401(k) was bound to increase dramatically over the course of a career. That is naturally not always the case and was unnaturally not the case for Enron employees.

As I have indicated, 401(k)'s are very popular, 42 million Americans with total assets of almost $2 trillion. So an account that was originally intended to be a supplemental source of retirement income has become the very foundation of millions of Americans' retirement plans.

Since the passage of ERISA, retirement security has changed in ways that the law never anticipated. As retirement savings have migrated to 401(k)'s, risks have shifted from the employer to the employee without additional protections for the employees. The Enron debacle has revealed for all of us how serious those risks can be for typical American workers, many of whom from Enron are in this room today. Those risks can be very dangerous when mixed with an undiversified portfolio and corporate deceit and/or mismanagement.

So it is time for the law to catch up with reality and protect our workers' 401(k) retirement plans. Now, when a 401(k) is responsibly managed and its risks are realistically understood, it can be a terrific tool that empowers American workers to build up funds for their future. So I hope that all American workers who have the opportunity will continue in the years ahead to contribute to their 401(k) plans and their employers will do the same.

But there is a real crisis of confidence in the markets today. You have only got to read in the morning papers what the markets did yesterday, attributed to a new fiscal disease called Enronitis. When you consider that, I think you have got to conclude that we in Congress must quickly address the problems that exist with 401(k) plans.

In developing a road map for reform, our attention should be on two issues in particular. First is over-concentration. When shares of Enron were near their highest value just over a year ago, about two-thirds of total 401(k) Enron plan assets were in the company's own stock. That is an average, incidentally, which means that some Enron employees had just about their entire nest egg in the company's basket. Well, what led that to be so, because normally an investor would not concentrate that much of their wealth in one investment because they want to balance their risk.

There are two reasons. One is Enron itself matched employee contributions to their 401(k) plan, but it did so with the stock of their own company and prohibited employees from shifting that company-contributed stock to a different investment until they reached the age of 50.

Second, the company's culture actively encouraged accumulation of its own stock. Top management repeatedly promoted the stock through internal publications and communications, even after top executives must have known, or certainly should have known, that the company was in danger of collapsing.

In a meeting on September 26 of last year, then-CEO Ken Lay was still telling his employees that the stock's $27 a share purchase price was an incredible bargain. Ken Lay claimed that the third quarter is looking great and we will hit our numbers. Of course, just 2 weeks later, on October 16, the company announced it was taking a $1 billion after-tax charge to earnings because of what I would have to describe as a cooking of the books.

Leaving aside the question of whether this was illegal, it is certainly wrong for executives to enthusiastically recommend their company's stock to workers when they know or should have known that the workers will be taking that as encouragement to buy more stock at a time when the company's future was extremely fragile. It seems to me it is wrong for management to convey in internal communication that the company stock is on the way up when they have reason to know otherwise. That is not inspirational optimism, it is dangerous deceit.

The problem of 401(k) over-concentration is particularly troubling because we now know how widespread it is in the American economy. Employees of companies with stock-matching programs, like Enron's, have about 50 percent of their 401(k) assets in employer stock, which is not what the typical investor in this country does.

Now, some people say that if employees are willing to put themselves at risk by putting so much of their money in one company, their own government cannot and should not stop them from doing that. Well, in the first place, as in Enron, let us remember that it is the employer, not just the employee, who is putting a lot of money in the 401(k) plans into their own stock.

But a broader answer is given by the creator of the very first 401(k) plan, benefits consultant Ted Benna, and he says, "We require auto passengers to wear seat belts because many will not wear them voluntarily. We should also protect employees from financial disaster by prohibiting them from investing all their retirement savings in a single stock."

The second major issue we are going to focus on today is what is known as the lockdown period. In late October and early November of last year, because Enron was changing the outside administrator of its 401(k) plan, employees were locked into their accounts for at least 2 weeks during a very volatile period in the company's stock price, making them powerless to sell their Enron stock as it was dropping. That left many of them feeling like their hands were tied to the deck of a sinking ship, and they were. The thought of employees sustaining huge losses while executives were able to sell stock for millions is infuriating, especially because it was preventable.

The risk of a catastrophic loss in the value of a 401(k) account during a lockdown increases exponentially when employees have most of their assets in a single stock, and when that stock is in the employer itself, the risk of such a loss occurring is even greater. In other words, the danger of a lockdown is multiplied many times over when employee's investments are not diversified. In Enron's case, management knew full well that their employees' 401(k)'s were overloaded with shares of Enron. Should that not have prompted them to postpone the lockdown when the company was reeling?

Recently, legislative proposals have been made which address these problems of over-concentration and lockdowns, including one over the weekend by President Bush. While I welcome the President's plan as a step forward, I must say respectfully that I believe it falls far short of what American workers need. By focusing on the lockdown but ignoring the core problem of over-concentration, the President himself has over-concentrated on the straw that may have broken the camel's back, not on the bales of hay that were weighing it down in the first place.

Enron stock had plunged way down to $75 a share from its high before the lockdown began. The 401(k) plans of Enron employees were vulnerable before, during, and after the lockdown because they were over-invested in a single stock, and remember, the employer's stock in the 401(k)'s could not be sold until the employees reached the age of 50.

The President's plan touches on over-concentration, but only by allowing workers to diversify the stock they have received through employer matches 3 years after they have vested, and then not as aggressively as it should. To me, that is a piece of the problem, but not the whole problem, and I hope we could work together to develop a more effective proposal to protect the retirement security of America's workers. I hope shortly to introduce a plan of my own and believe it can make a constructive contribution to what have to be bipartisan efforts to offer employees the retirement protection they need.

This is a very pressing priority. To many Americans, the three-legged stool of retirement security, which is made up of Social Security, private pensions, and personal savings, is starting to look wobbly. With concerns about the long-term stability of the Social Security fund and personal savings rates at just 1.1 percent, which is an historic low, we really need to get 401(k) reform right.

I think we have got a group of witnesses here today that can help us do that and I look forward to hearing from them, from those who experienced Enron's demise firsthand, from the Enron managers and others who helped to run the 401(k) plan, and from policy experts who will suggest ways to protect other workers from a similar disaster.

I do want to pause just personally for a moment and say that the Ranking Member of this Committee and our dear friend, Senator Thompson, suffered a terrible personal tragedy last week in the death of his daughter. I know that our hearts and prayers go out to him and his entire family, and that is why Senator Thompson, who has been very interested in working very closely with us here on these hearings, could not be here today.

But we are grateful to have Senator Collins, who has been deeply involved in the efforts of this Committee in this regard and in the Permanent Subcommittee on Investigations. I thank her for being here and I call on Senator Collins now.

## OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman. I want to start by thanking you for your continuing leadership as we probe the implications of the Enron bankruptcy. I have been particularly concerned about those who invested their hopes and their money in Enron stock, so this hearing is of particular interest to me.

Today, we are going to see the human face of the Enron debacle in the thousands of Enron employees who have lost their retirement savings as the result of the company's collapse. Congress owes it to the employees who have lost so much, as well as to future investors, to take a very close look at the rules governing the 401(k) plans relied upon by so many Americans as a future source of retirement income.

The 401(k) plan, as the Chairman indicated, was created to give employees a more secure retirement by encouraging savings and investment. These pension accounts have become very popular. Currently, nearly half of active workers, some 42 million Americans, participate in 401(k) plans, which hold about $2 trillion in assets nationwide. There are enormous tax benefits for both employees and employers in contributing to 401(k) plans. Employees can invest pre-tax dollars into their accounts and employers receive tax deductions on their matching contributions.

While the details are only now beginning to emerge, it appears that an estimated 15,000 Enron employees lost an astounding $1.3 billion from their 401(k) nest eggs. Reportedly, more than 50 percent of the assets in the Enron 401(k) plan were held in company stock, thus explaining the huge losses. Some shares were contributed by the company as matching contributions, but I am told that most of the company stock, about 89 percent, was purchased by employees themselves.

Like Enron's employees, many American workers have a disproportionate share of their employer's stock in their 401(k) plans. At some companies, workers have as much as 90 percent of their 401(k) retirement assets in their employer's stock. It cannot be disputed that in some cases, doing so has made some American workers wealthier than they ever could have dreamed. Still, investing large portions of one's 401(k) plan in any one company's stock poses significant risks because of the lack of diversification, as the Enron case unfortunately demonstrates all too well.

It may be difficult to determine to what extent Enron's employees, in buying so much stock, felt pressured to do so by corporate executives or simply by the corporate culture. Nevertheless, there seems to be near unanimous agreement that Congress must provide additional safeguards to ensure that workers are able to make sound investment decisions and are not prevented from selling their employer's stock for an excessive period of time. Furthermore, we should ensure that there is one standard for everyone in their ability to make such decisions rather than providing one system for high-ranking executives and another for rank-and-file employees.

The Enron debacle raises a key question of whether or not employees with 401(k) plans have adequate access to disinterested financial advice. Over the past several years, the demand by 401(k) plan participants for individualized investment advice has been growing, yet fewer than a third of all employers offer this service. As demonstrated in several surveys of employers, many are not offering this advice or making it available to the employees due to liability concerns.

To respond to this concern, Senator Jeff Bingaman and I introduced legislation late last year that goes to the heart of that concern. By clarifying an employer's legal duties, our proposal encourages employers and plan administrators to provide employees participating in a company-sponsored 401(k) plan with a qualified independent investment advisor to whom they could go for impartial investment advice. There are several additional proposals by other Members of Congress, as well as by President Bush, that deserve consideration, as well.

Mr. Chairman, the failure of the Studebaker Automobile Company in the 1960's, which left thousands of workers without pensions, prompted Congress ultimately to pass the Employee Retirement Income Security Act. My hope is that we can work together on a bipartisan basis to develop a solution that will restore our faith in the 401(k) plans as the vehicle for savings for retirement and ensure that what happened to Enron's employees is not repeated in the future.

Thank you for holding this important hearing and I look forward to hearing the testimony.

Chairman LIEBERMAN. Thanks, Senator Collins. Your statement gives me encouragement that we can go forward in a bipartisan way and adopt the kinds of reforms that will protect America's workers.

Senator Carnahan.

**OPENING STATEMENT OF SENATOR CARNAHAN**

Senator CARNAHAN. Thank you, Mr. Chairman. Our tax code encourages people to save for their retirement in special employer-run savings plans. We need to be sure that these savings plans are properly designed to provide retirement security to employees who faithfully contribute to these funds.

The devastating losses incurred by Enron employees compel us to take another close look at how these plans are designed and regulated. The events at Enron make me wonder if we ever learned anything from the sad lessons of history.

Early in the 20th Century in New York, on the tenth floor of an old building, was located a business known as the Triangle Shirtwaist Factory. It employed 500 women, ranging in age from 13 to 23. They worked at their sewing machines 56 hours a week for $9 or less. A sign posted on the wall said, “If you do not come in on Sunday, do not come in on Monday.” To assure that the company maximized profits, exit doors were secured to keep the workers physically locked in until management decided to release them. One day in March 1911, there was a fire. Unable to get out, 146 of these young girls died. Triangle paid the families $75 each, a paltry sum even in those days.

While I do not equate bankruptcy with the tragic loss of life, I could not help but see some parallels between what happened at Triangle and what happened at Enron. Enron kept its employees financially locked in when tragedy struck. Enron prevented workers from getting out of their holdings while the company was going up in smoke. The sign posted on Enron’s walls invoked trust. It was the company’s motto, the acronym “RICE,” which meant respect, integrity, communications, and excellence. Those principles had long been forgotten by the time Enron went into bankruptcy, paying a paltry severance check to thousands of laid-off workers while millions of dollars were paid in bonuses to a few in top management.

If there is any common thread between Triangle and Enron, it is greed. But Enron adds yet another deadly vice and that is arrogance. Enron thumbed its corporate nose at its loyal workers and trusting investors, scoffed at the rules of decency, and built a tower to hubris that dazzled the financial world. Enron’s officers repeatedly told employees that the stock was undervalued. They encouraged their workers to risk their retirement security on the company, even as it was careening toward bankruptcy. Enron’s conduct offends us because it violates the values that we honor most: Integrity, trust, fair play, and personal responsibility.

Mr. Chairman, I believe that those who rightly demand accountability of teachers, of students, of doctors, of welfare recipients, should demand no less of corporate America. Among all the questions that will be asked during the months ahead, there is one that looms in my mind—and that I will keep asking until I find an answer—and that is why no one at Enron stood up and said, this is wrong. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Carnahan, for an excellent opening statement. Senator Akaka.

## OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I want to thank you for conducting this timely hearing on “Retirement Insecurity: 401(k) Crisis at Enron.” We look upon this as a matter of great importance, and I want to thank the witnesses of the three panels that will appear this morning. I look forward to your testimony.

I also want to join you, Mr. Chairman, in recognizing Congresswoman Sheila Jackson Lee, and my friend, Jesse Jackson, to this hearing.

Mr. Chairman, I believe it is critical that we, as the elected representatives of the people, examine the issues raised by Enron's failure. Although we are looking at 401(k) plans today, I should point out that it was not just Enron employees who were victims. In Hawaii, the State Employees Retirement System lost $11.3 million as a result of the failure of Enron. While this represented only a small percentage of the total portfolio of the system, it is still a lot of money. Luckily, the State Pension System was diversified so it was able to more easily absorb the loss, unlike the Enron employees.

More and more companies are abandoning defined pension benefit plans for 401(k) plans. The 401(k) plans have permitted millions of Americans to save large sums of tax-deferred money to ensure they can retire comfortably. The 401(k) plans offer the potential for greater returns and more money during the retirement, but they come with additional risks that must be managed properly.

In many 401(k) plans, employers match the employees' contribution with company stock. We should investigate this incentive. Encouraging employees to save for retirement is extremely important, but we must examine the issue to see if providing matches in other forms would be more prudent.

For example, the Federal Government Thrift Savings Plan provides cash matches to be used for investing in index funds. These funds attempt to reap the benefits of appreciating stock while attempting to manage their risk through diversification. Or for those who want to reduce their risk even more, bond funds can be purchased.

The Enron example shows what can happen when employees lose both their jobs and their retirement savings. However, it is not uncommon for employees to have primarily employer stock in their retirement funds. For example, at Proctor and Gamble, 94.7 percent of 401(k) plan assets are in company stock. Sherwin-Williams and Abbott Laboratories also have greater than 90 percent of 401(k) plan assets in company stock. Many financial advisors would question having so much invested in one company. A 401(k) plan must be part of a diversified portfolio.

Mr. Chairman, I place a special importance on financial literacy and education so that all Americans have the necessary skills and information to prepare for a secure financial future. In examining this issue, it will be more important to see what information 401(k) plan participants are provided as they make asset allocating decisions that have tremendous consequences on their future financial condition.

Thank you again, Mr. Chairman, for calling this hearing.

Chairman LIEBERMAN. Thanks, Senator Akaka, for that very thoughtful statement.

I would like to now call the first two witnesses, William D. Miller, Jr., and Deborah G. Perrotta, and ask if you would come to the table and stand and raise your right hands.

Thank you both. Do you solemnly swear that the testimony that you will give the Committee today is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MILLER. I do.

Ms. PERROTTA. I do.

Chairman LIEBERMAN. Thank you. Please be seated. Let the record show that the witnesses have answered the question in the affirmative.

Mr. Miller is the Business Manager and Financial Secretary of the International Brotherhood of Electrical Workers, Local 125, of Portland General Electric. Your presence here reminds us that though the most consequential damage created by Enron's collapse is clearly in Houston, it also is national in its impact. I appreciate your making the trip here and we look forward to your testimony now.

**TESTIMONY OF WILLIAM D. MILLER, JR.,[1] BUSINESS MANAGER AND FINANCIAL SECRETARY, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 125, PORTLAND GENERAL ELECTRIC**

Mr. MILLER. Thank you. We currently have 911 active employees and approximately 550 retirees of Portland General Electric, a subsidiary of Enron. We have had a collective bargaining agreement with Portland General Electric since 1900.

The collapse of Enron has been devastating to our members. When Enron filed for bankruptcy, it took with it many people's dreams, hopes, and plans. I have met with and consoled many members as they come to terms with their losses. The names I am about to list represent only the lost stock value since employees were locked out of their accounts since September. We disagree with the October date.

Chairman LIEBERMAN. That is a very important point. I do want to come back to it during the question period, to have you expand on it.

Mr. MILLER. Roy Rinard was $472,000; Al Kaseweter, $318,000; Joe and Diane Rinard, $300,000; Dave Covington, $300,000; Tom and Patty Klein, $320,000; Mike Schlenker, $177,000; and Tim Ramsey, $985,000. Just these nine employees have together invested 188 years with PGE and lost $2,882,000, and this list goes on and on with the impact to the employees and retirees.

Enron's meteoric rise in the utility business was founded upon the concept of deregulation in the electric utility industry and its business success depended on its ability to sell State and Federal regulators and lawmakers on the idea of mandating deregulation in legislation. When electric deregulation began its flight in the late 1980's and early 1990's, the selling point was lower rates and customer choice. I attended meetings where Enron executives flew in the face of utility management and told them they were going to take over their operations.

PGE was a trustworthy, solid company which we had a good working relationship. There is a long history of collective bargaining that involves the PGE retirement savings plan that dates back to 1978. This was the first year employees were allowed to contribute money from their paychecks to a savings plan that was matched with PGE stock.

Most of our members and most all Oregonians were very skeptical of this Texas giant taking over our local utility company. PGE

[1] The prepared statement of Mr. Miller appears in the Appendix on page 80.

was an important pillar of the Portland community. Enron, however, saw PGE as a cash cow that had the in-house talent and expertise on interconnections to expand their high cash flow and leverage their trading operation. It took Enron nearly a year of negotiations and millions of dollars in community investments to gain the approval of regulators.

In July 1997, the takeover of PGE was completed and had been approved by all required regulatory agencies. In July 1997, all PGE stock held by employees was converted to Enron stock automatically. There were no other options available to employees. Not only did the stock change in name, but also in nature. It went from a stable, vertically integrated utility stock to a volatile, high-risk investment. No one told our members that the holdings were now a dramatically different type of investment.

In a move to dazzle employees, PGE came around handing out either $50 or $100 bills to all of its workers. They claimed it was a bonus for when the stock reached an appropriate level. On August 16, 1999, Enron stock hit approximately $80 a share and split.

In April 2001, Ken Lay told employees the stock would continue to rise. The company's newsletter ran articles touting their prosperous future, even though Ken Lay was simultaneously selling millions of dollars in company stock. Our members were wondering why the CEO was selling so much stock if the company was doing so well. Also in April, Mr. Skilling told employees that stock was undervalued and would go to $120 per share.

On August 14, Ken Lay sent an E-mail to employees stating, "Enron is one of the finest organizations in business today. Performance has never been stronger." On August 21, Ken Lay sent another E-mail to employees expressing confidence that stock prices would continue to go up. This was also quoted in the Enron newsletter. On August 27, Ken Lay announced to employees via E-mail that workers would now have stock options and that Enron stock would be at a "significantly higher price in the future." Every time a question was raised, people were always reassured through an E-mail or some other communication that the company was doing better than expected and would continue to flourish.

On September 27, our local union received the first complaints that some employees could not access their 401(k) accounts to make changes. For the most part, employees' transactions were conducted online from their PCs. Our members said they could see their accounts on the computer but could not transfer any assets or make any changes. We verified this with workers at three different divisions within Portland General Electric. It seemed that the access throughout the company was very inconsistent. Workers would call the plan administrator and be on hold on the phone, or if they did get through, they were told that the system was down temporarily and try later.

On September 28, their 401(k) accounts would be locked out. The union was informed that they would be locked out on October 19, 2001, lasting for about 1 month while changing administrators from Northern Trust to Hewitt. Employees were officially notified of the lockdown by company E-mail. If you did not have access to a PC or were retired, you would not have received notification. I understand there is some disagreement on that point, but that is how we understand it from our members.

Many of our members wanted to sell their Enron stock during the lockout. Instead, all they could do was simply watch helplessly as the stock price tumbled dramatically and their life savings disintegrated before their eyes.

To summarize the wild ride we were on with stock prices from the beginning of the year through the end of the lockout period: January 25 was $81.38; September 28, $27.23; October 19, $26.05; October 30, $11.16; November 13, $9.98.

If one looks at the big picture of the region's utilities, it is a pretty grim reality. The stability of surrounding companies has a direct impact on our relationship with our utility employers. Avista Power in Washington State, once known as the pillar of the Northwest utilities for stability, has had trouble making payroll for its existing workforce. Puget Sound has just concluded their negotiations, resulting in a majority of their workforce being laid off and being replaced by contractors. Pacific Power and Light was sold to Scottish Power from the United Kingdom and is in financial trouble, having just terminated their CEO. Pacific Gas and Southern California Edison are in bankruptcy. We attempted then and continue to work toward moving our pensions and all other benefits into an arena that is not employer-dependent.

The day of the stable utility employer no longer exists, thanks in large part to Enron. The employees of these once stable entities can no longer trust their employer for a true accounting of what their company's future holds for them.

In our case with Enron/PGE, thousands of employees trusted their employer to tell them the truth and the employer deceived them. The fallout from this debacle will affect our country for generations to come. Our people played by the rules. They were not sophisticated investors, just hard working, honest folks who became victims of the Enron debacle.

In our small part of the world, our best guess is that in excess of $800 million has been stolen by Enron, ruining nearly 3,100 lives, and I am talking about PGE employees, union and non-union, and retirees. We had members guided by their faith in a company and its promises who lost everything. And I will say that clear back in October and November, we requested statistics, required by ERISA to be given to us by the employer, and to date, we have received no information whatsoever as to the impact it has on our workers. We have received nothing.

Thank you for the opportunity to speak before your Committee today. I appreciate it.

Chairman LIEBERMAN. Mr. Miller, thanks for a very compelling statement. As one of my colleagues said, you and Ms. Perrotta put the human face on the headlines that we have been seeing, and it is a painful face to see because you have been hurt.

Deborah Perrotta is a former Senior Administrative Assistant in Enron Corporation. We are very grateful that you are here and we look forward to your testimony.

**TESTIMONY OF DEBORAH G. PERROTTA,[1] FORMER SENIOR ADMINISTRATIVE ASSISTANT, ENRON CORPORATION**

Ms. PERROTTA. Good morning, Mr. Chairman and distinguished Members of the Governmental Affairs Committee. Thank you for giving me the opportunity to come here today to share personal insights into the financial, social, and emotional impact Enron's demise has had on my family, former employees, pensioners, and shareholders.

My name is Deborah Perrotta and I am a former Enron employee that was involuntarily laid off on December 5, 2001. I was employed by Enron from January 1998 to December 2001 as a Senior Administrative Assistant. During that time, I worked for Enron International, Enron Engineering and Construction Company, and Enron Energy Services. Let me take a moment to paint a picture of what it was like to be an employee of Enron.

I was ecstatic and proud to be part of the Enron family. There was a lot of competition for jobs at the company. The employees at Enron had great respect for the management. We believed that the company was full of opportunities for anyone who was willing to work hard. There was a dynamic of excitement at Enron. They had an unbelievable reputation and were known for hiring the best of the best.

I, myself, gave 110 percent to the company. Many times, I worked late into the evenings, and numerous times, I received phone calls in the middle of the night from my superiors when they were overseas trying to close business deals, but I did not mind because I really loved the company and my work. I believed that the company would live up to its promises and that by working hard, I would be able to secure my financial future.

There was an atmosphere of great pride, trust, and respect for the management and Enron's invincibility. Our successes only served to reinforce our invincibility. I was ecstatic to be associated with a winner whose mission, as defined by Mr. Skilling, was to be the world's leading company. If you doubted it, you only had to attend an employee meeting and read our literature to have any doubts removed. We felt great optimism, security, and confidence about the company's future.

In 2001, Jeff Skilling was named CEO. Soon after, he held an all-employee meeting in February, where he touted that the stock would be valued at $120 by year end. After only 7 months, Mr. Skilling resigned for what he and Enron said were personal reasons on October 14, 2001. As a result, Mr. Lay reassumed the Chairman and CEO position. Shortly thereafter, he held an employee meeting and assured employees that Enron's reputation would be restored. He wanted us to continue what we were doing and to stay focused on our mission while he would spend more time educating the investor community. Mr. Lay said that the problem was never an issue of the business model, innovation, or profitability, but rather that investors did not understand how we made money.

Mr. Lay followed up that meeting with an E-mail dated August 27, 2001, giving me shares valued at $36.88 per share. In the

[1] The prepared statement of Ms. Perrotta appears in the Appendix on page 91.

memo he said, “As I mentioned at the employee meeting, one of my highest priorities is to restore investor confidence in Enron. This should result in a significantly higher stock price. I hope this grant lets you know how valued you are to Enron. I ask your continued help and support as we work together to achieve this goal.” From this memo, many others and I were encouraged, since he was a seasoned executive with great integrity and respect.

Then on October 16, Enron made the first announcement that something was really wrong, the $1.2 billion equity write-down.

We who worked at the Houston headquarters received notification in September that we were changing savings plan administrators and the last day for any investment fund balance changes would be October 26, 2001. This notice stated that certain kinds of fund transactions would not be possible after October 19, 2001. Finally, the notice said that the transaction period would end on November 20.

Though we received an E-mail on November 14 saying a new plan website was up, that E-mail did not say we could make investment fund balance changes. I do not know when it became possible to do that again. I know employees of Enron subsidiaries and retirees had testified their lockout periods were longer. I hope you can get to the truth of how long these periods really were and whether everyone was really treated the same. During this period of the lockout, Enron’s stock price fell more than 50 percent, from $15.40 at the close on October 26 to $7 at the close of November 20.

Less than 2 weeks after the freeze, Enron filed for bankruptcy, on Sunday, December 2, 2001. Two days earlier, Enron cut $105 million in retention bonuses for a small number of executives. The next day, Monday, December 3, 2001, I and 4,500 Enron employees in Houston were fired. According to the Enron policy and procedure manual, we were owed an estimated $150 million in severance and vacation pay. When we asked for it, they said they could not pay us because the bankruptcy court was making all financial decisions. A couple of weeks later, many of us got checks for $4,500 in severance, less taxes and insurance, really about $3,000.

I understand that even though the company promised us severance payments averaging roughly $37,000, and even though there are billions of dollars in assets still in the company, we have to wait in line behind the big banks in bankruptcy court and we hear there will not be much left to all the victims of Enron after those banks have been paid off. It may be the law, but it is wrong.

Due to the layoff freezing of the 401(k) plan and loss of severance, I and thousands of others lost the resources we all counted on and worked to pay our bills, fund our retirements, and feed our families. I am not alone in my pain. I am just one of the thousands of former employees and retirees desperately looking for relief and eventual reform.

Chairman LIEBERMAN. Take your time.

Ms. PERROTTA. I really did not want to come here, but I saw this as an opportunity to bring light to the pain and suffering of others, as well. Herein lies many lessons for the American workers, and I am sorry I am the example.

In 1997, my family and I were rebuilding a nest egg as a result of some adversities we experienced a few years earlier. My layoff and loss of 401(k) came at a time when my oldest daughter was preparing for her wedding in September 2002. As such, financial commitments were made, increasing my frustration and anxiety. As a mother, this is something I always dreamt of doing for my daughter. Today, that burden has fallen on her shoulders.

Chairman LIEBERMAN. Take a minute. Do not be rushed. We really appreciate what you have been through, Ms. Perrotta, and that you had the courage to come and talk about it. It is the only way we are going to appreciate the impact of what has happened here and we are going to be motivated to make sure, to the best of our ability, it never happens again.

Ms. PERROTTA. Thank you. Today, that burden has fallen on her shoulders. Since I was with Enron for 5 years, my losses were $40,000. Now, when you couple the loss of medical coverage, dental, life insurance, and the struggle to pay my most basic needs, like food, mortgage, car payments, etc., you can appreciate why I am here before you.

The demise of Enron has affected everyone in my family emotionally and physically. Our monthly prescription costs are more than $300 and we cannot afford it. Without employment, we can last but a few more months. This is embarrassing for my family and me since we have a strong work ethic and had faith in the system. But I must say that my family and I are among the lucky.

Besides losing their 401(k)'s, many laid off Enron employees are losing their homes, have medical expenses, and face an uncertain future that only a short time ago looked bright. A poll of 482 former employees/shareholders taken on January 28, 2002, showed a sum of $363 million dollars was lost from their 401(k) accounts. Five of my friends' total losses combined exceeded $6 million. This may sound like these were rich people, but this was the money that they were planning to live off in retirement. For my friends in their 50's, this money simply cannot be replaced.

Obviously, many retirees were greatly affected. One E-mail I received, "I am in a state of shock about the events and I was not astute enough to get out of my 401(k) when the price of stock was at a reasonable level. I rode the damn stuff right into the ground and now I have nothing from my Enron retirement plan. I was hoping to retire in 2 to 3 years, but after sinking a lot of money into Enron stock and saving plan, looks like I will be doing pipeline work when I have a white beard."

On January 28, when traveling to Washington by bus, we stopped in Baton Rouge and I met Mr. Kling, a retired Enron employee. He met us with tears in his eyes and told the group how much he really appreciated our efforts, since he retired 2 years earlier and now has seen his 401(k) money disappear. At age 72, his future is behind him and he is considering going to work to make ends meet.

This is not right. We worked hard. Many of us worked as hard as we possibly could, often at the expense of our families. We put all our ingenuity and creativity at the service of a company we believed in and trusted and were certain would reward our commitment. When Enron told us its business was sound and its stock was going to go up, we believed them. We put our money in the company stock in good faith, and Enron's leadership and government let us down.

I am here asking for my family and thousands of other families whose lives have been destroyed by a handful of individuals. We need your leadership now. We need financial relief now. We know you cannot replace the losses in the 401(k) plan, but you can create legislation to provide immediate relief and eventual reforms that would protect the American workers in the future.

We think you need to do two things. First, you need to make sure that if a company wants its workers to put their retirement money in the company stock, that company needs to back up that stock with some kind of insurance so that those employees are not at the risk to lose everything.

Second, we need bankruptcy reform that gets workers on a real place at the table when their employer goes bankrupt, and particularly when those workers are victims of fraud.

In closing, my colleagues and I loved Enron and were passionate about its success. We believed Enron leadership and the endorsement by others of success and future prosperity. Now the company's own board members said they inflated the earnings by over $1 billion. This should and cannot ever happen again in America.

Perhaps our trust in Enron's leadership and board of directors was misguided. My fellow ex-Enron employees and I came to Washington with some faith that our government would right the terrible wrong that has been done to thousands of Enron employees and pensioners. I hope that faith is not in vain, for many of us are desperate and have no place to turn. Thank you.

Chairman LIEBERMAN. Ms. Perrotta, thank you. We are not going to forget your testimony and what you have been through.

You remind me of the same feeling I had last week when—you were there, I guess—in the meeting brought together by Congresswoman Sheila Jackson Lee and Reverend Jackson with former Enron employees. What struck me, apart from the stories, is just what struck me as you were speaking. This is not, if I can put it in simplistic terms, a classic labor-management controversy where there has been a sense of anger at management over the history of the company.

You all, as you said so eloquently, played by the rules. You were devoted to the company, remarkably devoted to the company. In some sense, it took you up and then it dropped you down, and the feeling that I felt last week and I feel it again today is, of course, anger, but it is a different kind of anger. It is the anger that comes from, in some senses, being heartbroken, feeling like you were cheated, like you were betrayed. Our hearts go out to you, and it is the reality and anguish of your story that, in turn, makes millions of other workers around the country nervous today and why we have got to step in quickly and offer some protection to workers.

Let me ask a few questions. There is a vote on. I am going to go over, and then I will yield to Senator Collins, and when she is done, we will recess for a short while and then come back.

Mr. Miller, let us just talk briefly about the lockdown period, because there is a dispute here and it is a consequential dispute. I have given you some charts. I have put a larger one up there.[1]

You say that workers in Portland first had trouble trading in their stock as early as September 27, when the price of Enron stock by my calculation was $25.25. You say that that period ended on November 19, when the value was just under $7. So from $25.25 to $7 is a big drop.

Enron says that the transition period, the lockdown, was October 29 to November 13, still, as Ms. Perrotta said, a very large percentage drop, which was around $15—what did you say?

Ms. PERROTTA. Fifteen-forty to $7.

Chairman LIEBERMAN. Fifteen-forty down again to the $7, so that is a big drop. Tell me a little more, Mr. Miller, about why you contend that people had trouble trading in their stock as of September 27.

Mr. MILLER. As I stated earlier, I am the business manager and I have six different business reps who work for me. Two are assigned to Portland General Electric, the business reps that work exclusively on PGE property. One of them came into me and said, "I have got problems. I have got two phone calls from Gresham Division," which is just a division of Portland General Electric, "and they said, 'Bill, we cannot get in. The guys cannot get into their 401(k) accounts.'"

And so I said, well, call some other divisions and see if we have got the same problem. So we called two different divisions and specifically asked people that we knew were very active in the 401(k) if they could get in and they could not, and this was in two different divisions. So we got a hold of the company, Portland General Electric, and said, what is going on here? At that time, people in other divisions had called HR themselves and they said, like I said earlier, they were either put on hold on the phone, could not get through to Enron or the plan administrator at that time, or the people just, they could see their accounts.

And I went out to Gresham Division and said, show me what you are seeing, because they could either do it by push button phone or by the PC. They could not get into their accounts and they said, "This thing is going into the toilet and there is nothing we can do about it." I contacted the company, PGE, because that is who we deal with, not Enron, and PGE said, "Yes, they are having difficulties, but we will get it fixed. Do not worry about it."

Chairman LIEBERMAN. OK. There is a $10 difference between September 27 and October 19 or 29, so a little more than that. That is a very significant difference in terms of the money people lost or the ability they might have had during that time to trade.

Mr. MILLER. Right.

Chairman LIEBERMAN. The other concern here is, as you have indicated, that some folks apparently did get an E-mail saying that the lockdown was going to start on October 19 instead of October 29, which I gather the company acknowledges was a clerical error of some kind. Is that right?

[1] The chart entitled "Enron Stock Price/Share; 2001" appears in the Appendix on page 174.

Mr. MILLER. I cannot testify accurately or—I can only tell you what I was told. We are required by our contract, labor agreement, and by ERISA and a bunch of other laws and rules to be notified of such actions taking place. We were notified by an HR consultant that has no interest really in that arena by Portland General Electric and said, we think this is what is going to happen because we have not got the official notice of when it was going to go down, and so there have been a lot of changes that were in direct violation of several laws, rules, regulations, that we were never notified about. I can only relate to you what the employees have told me.

Chairman LIEBERMAN. Right.

Ms. PERROTTA. Mr. Chairman, can I respond on that?

Chairman LIEBERMAN. Yes, ma'am. I was going to turn to you now. Go ahead.

Ms. PERROTTA. We did receive in the mail, because I have two copies of it—unfortunately, I do not have it with me right now—saying that it was going to start October 19. It was a brochure that was sent to us in the mail.

Chairman LIEBERMAN. Now on October 19, the stock price was $26.05.

Ms. PERROTTA. On October 19.

Chairman LIEBERMAN. Right.

Ms. PERROTTA. Right. But then we got a memo, it was also an E-mail, saying it was going to start another time. So there was a conflict in times. So some people could have seen it on October 19 and figure, OK, they cannot get into their money then. It is locked until October 20. And the other people who got E-mails saying, no, it is going to start on October 26. So it depends on where you were, if you were there, if you got E-mails, if you did not, if you received that in the mail and did not have any other additional information.

Chairman LIEBERMAN. I am going to stop here because the clock is running. I am going to go run and vote and come back. I am going to ask you to stay on the panel because I have a few more questions and I will yield to Senator Collins.

Senator COLLINS [presiding]. Thank you, Mr. Chairman.

Ms. Perrotta, I want to first thank you and echo the Chairman's praise of your courage in coming forward to talk about what has been such a devastating experience for you. I was struck as I listened to you what a true believer you were in this company. That you had such strong faith in the system and the company, in your job, and you believed if you just worked really hard, which obviously you did, that you were going to be financially rewarded, but here you sit before us financially devastated. I just want to tell you that I am so sorry for what you have gone through. We have learned from it and I think that we will come up with legislative reforms.

I want to get a better sense of the culture in Enron that led the employees to purchase so much of the stock on their own. I am not talking about the Enron stock that the employer contributed. Was there pressure to purchase Enron stock for your 401(k) plan? Did you feel that if you did not, you would not be considered a team player?

Ms. PERROTTA. Actually, there was not specific pressure by words but there was by action, always touting how much they were making. Our company meetings, whether—we had employee meetings two or three times a year. There were graphs. There was our top executive saying that the company is doing very well, we are making all this money. And when you walk out of there, you feel there is your chance to make some money. The stock is doing so well. We have certain options that we can buy it at a certain price. We were given options throughout the year.

So you felt that what they were telling you was the truth because you believed in them. You really believed in them. Mr. Lay has done so much for the community, has given so much to the community, and we really trusted him and what he told us, that is the truth.

The spirit among the whole Enron, you have to be there to understand the many years that people really—it is like one big, happy family, and everybody was making money, was doing well, and everybody was working hard. So when you have that atmosphere and your leader is telling you that, yes, this division is making money, this division is making money, the majority of Americans would invest in the stock.

Senator COLLINS. You must feel so deceived and so betrayed.

Ms. PERROTTA. Very much so.

Senator COLLINS. Did you have access to an impartial, outside investment advisor who would give you some advice on your 401(k) plan?

Ms. PERROTTA. Actually, no, because after the years of diversity we had, we were just starting all over again. So in the beginning, we were just starting to put our money in, and then we were, in fact, that was one of our main things, and after October, we started seeing things just fall apart and we just sat there and just watched it.

Senator COLLINS. If you had access to impartial experts with no connection to the plan and to your company, do you think that would have encouraged more diversification?

Ms. PERROTTA. Well, I did not diversify 100 percent, so I did diversify in other areas and that, with the stock the way it was, it lost. But even so, the analysts were touting also how well Enron was doing.

Senator COLLINS. That is a very good point.

Ms. PERROTTA. And so you are hearing analysts outside of Enron and so you say, well, yes, it is doing good so might as well leave it where it is.

Senator COLLINS. And that is a function of the many conflicts of interest that taint this entire system, so I think you put your finger on an important point.

You have helped us put a human face on this tragedy and on the deception and I really thank you both for being here today.

We will take a temporary recess until Senator Lieberman returns. Thank you.

[Recess.]

Chairman LIEBERMAN [presiding]. We will reconvene the hearing. I apologize that we had to break the flow because we had to go to vote on the Senate floor. I thank you for your understanding.

Mr. Miller, take a moment and I want to ask you to just develop a little more one of the parts of your testimony which is actually quite different than the testimony from the Houston employees, which is where we see such tremendous loyalty to the company which was devastated by what happened. But in your case, your folks in Portland felt, I gather, that the whole mood of the company changed when Enron took over.

Mr. MILLER. Yes.

Chairman LIEBERMAN. Why don't you talk about that a little bit.

Mr. MILLER. Understand, Portland General Electric is a utility that serves about 700,000 customers, around and in business since 1899 or 1900. It started as a railway company. A lot of employees were third generation, that type of scenario. There was always speculation they were going to be bought and sold by somebody overseas, whatever. Anyway, but the loyalty of the employees—we have had some bumps over the road over the years, a major strike at one time, but that was 40 or 50 years ago. But the employees always believed in the company and we have had some pretty good CEOs who we worked with.

But the loyalty was never to any outside entity, it was always to PGE proper, and when Enron came in and everybody looked around and said—understand this is from a union point I am taking about, notoriety of a highly non-union company, etc., not a good working relationship and all that kind of stuff, but over the years, we did not actually deal with Enron at all. It was token visits, if you will. Enron came in and took the expertise that PGE had in order to expand their business, but other than that, that is what it was.

But as far as the Enron proper, nobody paid them any real credence, but when the stock was converted over to the Enron stock and PGE stock went from $26 to $36 to $44 to $80, split——

Chairman LIEBERMAN. Right.

Mr. MILLER [continuing]. It was going right back up the ladder, I am sitting there looking at 15 or 16 of our members that are over $1.3 million. But everybody was starting to get skeptical, and I do not know of anybody, anybody at all, that did not lose that had any time with the company, say a 10-year—I am using as an example a 10-year employee—that did not lose a minimum of $100,000.

Chairman LIEBERMAN. OK. It is a painful reality. Let me ask you, Ms. Perrotta and Mr. Miller, if you have any response to this that you heard from your members. Were you ever warned by the company or urged by the company to diversify the stock holdings in your 401(k)? In other words, one of the things in hindsight that we look at and we say, gee, so many people are in the market today, more than 60 percent of the American people have stock in one way or another, and one of the fundamental rules seems to be you spread out your holdings so if one goes down you balance with others. Did the company ever give you advice to diversify.?

Ms. PERROTTA. They did not give us advice. I know we had some other options. But knowing that the stock was doing well and according to them that we were doing tremendously well, I think the average American person said, well, I can make some money that I have not had a chance to make before—put it into the stock.

Chairman LIEBERMAN. When you say you had options, in other words, the company—a lot of employee plans give you a series of, for instance, mutual funds or other funds that you could invest your money in in addition to or instead of in Enron stock, is that what you mean?

Ms. PERROTTA. Well, yes, because I did not invest 100 percent.

Chairman LIEBERMAN. Right.

Ms. PERROTTA. But like I said, most people really did not—they knew that that was the better investment at the time, I guess believed than what they thought other investments might be.

Chairman LIEBERMAN. Right. Let me ask this from both of you. From your personal knowledge, do you know of any, either yourselves or of any Enron employees, that when the notices about the lockdown period came along, whether it began on October 19—I am sorry, September 27, or whether it began, as the company says, on October 19 or 29, do you know of any employees who went to anybody in the company and said, the stock is sliding? This is a terrible time to lock us in. Put it off.

Ms. PERROTTA. No, not that I know of. At my level, I would not know who to go to, to be honest about that, but we trusted the management and we trusted the fact that Mr. Lay came back. The employees were ecstatic that he came back.

Chairman LIEBERMAN. Right.

Ms. PERROTTA. When he came back in August, he had a standing ovation. Mr. Skilling had a cutthroat attitude in the company, so when Mr. Lay came, it reinforced us.

Chairman LIEBERMAN. You were glad he was back?

Ms. PERROTTA. Yes, we were, and we were very glad he was back, so we really thought things were going to turn around. So I, personally, did not think the lockdown was going to be that effective. But then when I saw the stock drop, it was when everything just fell apart, and then they declared their loss.

Chairman LIEBERMAN. Mr. Miller, do you know of specific cases where employees in Portland, when they heard that the lockdown was coming, went to the company and said, put it off?

Mr. MILLER. Yes. Sometimes we were the first call. Sometimes we were the second call. These people in the divisions that I talked about earlier, they were the ones that were calling and we had more people than I talked to, of course, HR Portland General Electric.

Chairman LIEBERMAN. Right.

Mr. MILLER. And yes, they did go in there and said, we cannot get into our accounts——

Chairman LIEBERMAN. HR is human resources?

Mr. MILLER. Yes.

Chairman LIEBERMAN. Cannot get into our accounts—and do you know what the response was? Obviously, it did not change, but do you——

Mr. MILLER. A glitch in the software, hardware, we do not know. I think it is important to note, though, especially that the Portland General Electric employees were told, do not call Hewitt at all. You go through us. We will do the contact. Do not call Enron. Do not call the plan administrator. You will only deal through us.

Chairman LIEBERMAN. Right. Two of my colleagues have arrived so I am just going to ask this last question and yield. Incidentally, one of the things, the more I learn about the situation, that comes out at me as a—we are all focused on the lockdown period, whatever the time is, in the fall of last year while the stock was collapsing. But there was inherently a lockdown that went on because the company always matched the employees' 401(k) contribution with its own stock, as I understand it——

Ms. PERROTTA. Yes.

Chairman LIEBERMAN [continuing]. And that stock vested after a year, right, but then you could not sell it until you were 50.

Ms. PERROTTA. Yes.

Chairman LIEBERMAN. Now, that is a perpetual lockdown, presuming somebody came to work at an earlier age. They are trapped as the stock collapses and cannot do anything, and that is something the President's proposal tries to deal with. I think he allows too much time still. He allows 3 years after vesting, and then after the 3 years, you can begin to diversify out of the company stock. I think it ought to be shorter than that. As a matter of fact, once it vests, I do not know why you should not be able to do with your stock which you then own. Why should you—particularly as it is dropping—not have the right to sell it.

Of course, the overall picture here—I am going to ask you a tough question, Ms. Perrotta, and it is based on what you have said about the attitude that employees had in Houston for the company—the overall picture that we have all had that infuriates us is employees are locked into their stock. The stock value is dropping. In the meantime, all along the way during last year, executives are selling stock at enormous profit.

But I want to ask you this question. Do you think that employees at Enron, even if there had not been a lockdown, would have sold their stock while it dropped in value? In other words, there was such loyalty that the company built up among employees to the company that I wonder whether folks just would have hung in there. You keep hearing these promises, by Mr. Skilling first and then Ken Lay afterward. It is going to go back. It is underpriced. Hang on.

Ms. PERROTTA. I do not think after, when they declared their loss, it actually showed that their—they understated their earnings, that I do not think people would have kept it in. No, I do not believe so.

Chairman LIEBERMAN. At that point, the lockdown really did stop them from doing what they would have wanted to do?

Ms. PERROTTA. Right.

Chairman LIEBERMAN. Thanks very much. Senator Levin.

## OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman. Thank you for calling this hearing today. What we have seen at Enron is the deceptive practices of management and auditors, tolerated by board members, leading to the destruction and demise not just of a corporation, but of the retirement funds of employees and to the savings and investments of stockholders.

This is an onion which has got a lot of layers. Each one has a deeper stench than the one before and the Congress is going to get to the core of this onion, as many months or years as it takes us to try to prevent this from happening again. Hopefully, we will do it in a way which will lead to changes in the way accountants keep books, the way tax havens are currently used, the way stock options are currently abused in ways which provide tremendous profits, mainly to some corporate executives, while not being reflected on the company's books as an expense. We have a lot of work to do.

There are a lot of reasons that the stock price was inflated artificially by the managers of this company, but one of the reasons that the stock price was so important to these managers was because of the stock options that they held. Those stock options not only benefitted Enron officials individually but provided an enormous tax deduction for Enron at the same time, helping to give an artificially rosy picture of Enron's financial situation. I will be reintroducing in the next few days, with Senator McCain, a bill which I introduced 2 years ago, which did not pass, but which would require that stock options be deducted from earnings to the extent that they are deducted for taxes. We could not get it passed a few years ago. I think we have a lot better chance of getting it passed today.

But today's hearings are looking at the 401(k) problem, and I want to spend a couple minutes on that and then ask a few questions.

There are two basic issues we face. One is the lockdown issue, and it seems to me that is clear. It is unconscionable that employees cannot sell stock at the same time employers can sell their stock, exercise options and sell stock. During this lockdown period, it was the employees who could not sell stock and diversify. The employers during this same period were selling their stock.

Now, if the lockdown period was necessary as some way of transferring agents or changing agents that run the account, why did that same transfer period not apply to the employers? Why were the complexities, if there were any, of changing agents, requiring a period when transactions could not be completed, why did that same problem not apply to the transfers and sales by the employers, as well? I have not heard an explanation of that, by the way, at all.

I think we are all disgusted by what the management did here in selling stock while they were touting it. Selling stock, while employees were unable to sell stock and were frozen and locked down. But I have never heard the explanation from the new agents of the fund as to how is it that they were able to make the bookkeeping changes for the employers' stock options and sales of stock when they were allegedly unable to do so for the employees. That is one issue. That is the lockdown issue. There are a lot of sub-issues to that.

But the other issue is whether or not Congress should restrict the percentage of a company's stock which can go into a 401(k) plan, and that is a different issue because that restricts choice. There, it seems to me, we have got to think through the implications of restricting the choice of employees.

In the first problem, with the lockdown, we are simply saying we want equal treatment. We do not want employees to be prevented from doing something that employers can do. That is just a matter of pure fairness. That is treating people equally, whether they are employees or employers. It seems to me that is a relatively easy question, and that we should insist on that.

But when it comes to the question of setting a maximum limit as to how much of a company's stock an employee puts into his or her 401(k), we have got a different issue. First, would that deter companies from offering stock as a part of a 401(k)? The second issue is that choice issue. Do we want to restrict employees' choice?

I just have a few questions of the witnesses if I have any time left.

Chairman LIEBERMAN. You do.

Senator LEVIN. I still have a green light. Were you given any explanation by the management as to why you were not allowed to transfer or sell stock during the lockdown period while they were?

Ms. PERROTTA. To be honest with you, I was not aware of that until after the fact.

Senator LEVIN. After the fact, has any explanation been forthcoming?

Ms. PERROTTA. No, not to my knowledge.

Senator LEVIN. Have either of you heard any explanation?

Mr. MILLER. I have been through three different lockdowns with different utilities, ranging from 2 weeks to 6 weeks, and it just seems to be that is the way it is because one plan administrator does not want to release the money any sooner than they have to to give the control over to the other one. That is the best explanation that I have ever been given.

Senator LEVIN. But why would that not apply the same way to sales by management, that same argument? You have not heard any explanation——

Mr. MILLER. No.

Senator LEVIN [continuing]. As to why, if that argument has value——

Mr. MILLER. No.

Senator LEVIN [continuing]. It does not apply equally to the management sales?

Mr. MILLER. No.

Senator LEVIN. I do not see how there is any justification offhand. It just seems to me to be a totally unfair and discriminatory treatment of management actions and employee actions relative to stock transfers.

I am wondering if you can give me just an opinion, if you have it, about mandatory caps. Should Congress put a 20, 30, or 40 percent limit as to how many shares of an employee's company stock can go into that 401(k) plan? Do you have any either technical or just intuitive reaction to that question?

Ms. PERROTTA. I really do not. I guess it depends on the individual. I really could not say exactly how much that we should be limited to at this time, but I think if we had some kind of a policy where we knew we were going to be insured by this if we lost, for savings, then I do not think there should be a limit, maybe.

Senator LEVIN. OK, thank you. Mr. Miller, do you have any thoughts on that?

Mr. MILLER. We questioned our members at several different meetings about that and most of the members are of the opinion they do not want to be told what they have to do. But I will say that with Portland General Electric and shortly with Pacific Power and Light, Scottish Power, whoever you want to call them this week, their contributions will not be in stock anymore. As of November 30, the PGE match is in cash. And shortly, Scottish Power is going to that proviso. But I will tell you that people will turn around and buy 25 or 50 percent portfolio in the company stock because of the trust.

Senator LEVIN. Do you believe that we ought to restrict the percentage that they can invest in that portfolio and still have a 401(k) option?

Mr. MILLER. Speaking as an individual, yes.

Senator LEVIN. That we should put a limit on it? That to be eligible for a 401(k) tax treatment, that you cannot buy more than a certain percentage, invest more than a certain percentage of your 401(k) in your own company stock?

Mr. MILLER. If we are talking about the stock that is matched, yes.

Senator LEVIN. OK. Have either of you either asked or heard of any explanation for the switch of trustees and recordkeeping? Have you heard of why that switch was made that resulted, allegedly, in the lockdown, from one recordkeeper, one directed trustee to the other?

Mr. MILLER. I can tell you what I was told.

Senator LEVIN. OK.

Mr. MILLER. There was a lot of ego-tripping going on and what I was told was they have the authority to do it. They, like any other company, they probably bid that out for administration purposes. If you are prudent, you would bid that work out every couple of years. But what I heard was that there was ego-tripping going on and basically what happened is somebody walked down the hall and said, you are out, you are in, have a nice day. That is what I was told from management, for what credence it is worth.

Ms. PERROTTA. No, I did not.

Senator LEVIN. OK, thank you. Thank you very much, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Levin. Senator Voinovich.

## OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. I am sorry that I was not here to have an opportunity to hear your testimony.

My main concern is the same question I will be asking all the witnesses. You were victims of this situation. What changes do you think need to be made to improve the situation? I have talked with a lot of people with 401(k)'s, and in some cases where the employer provides an employer share and it is in the company stock, there is a provision that says you cannot do anything with it until you have been with the company until you are 50 years of age. There are other restrictions that are on it as well. But in terms of the money that you invest in your own 401(k) in the company, most of the companies say you can do what you want with that money. Put it in the company if you want to or put it someplace else.

I would be interested in what three things you would do to change the system, and I apologize if you are repeating yourself.

Ms. PERROTTA. One of the things that I feel that we do need is some type of insurance to protect our money that we invest in the 401(k) and the company, what they invest for our retirement funds. We have insurance for our money in the savings account. Why can we not have insurance to back up the money we have in our 401(k)? And I think the company should have that money in a secured account in case something should happen like this again, and also to change our bankruptcy laws if this should happen again.

Chairman LIEBERMAN. Ms. Perrotta, I do not want to lead you as a witness, but why do you not repeat for Senator Voinovich what you said about severance pay and your concern about it for the Enron workers.

Ms. PERROTTA. Which we have not received any severance pay at this time. We had—2 days before the bankruptcy, approximately $105 million was paid to upper management for retention bonuses or for whatever. Two days later, we filed for bankruptcy. We could have possibly received $158 million to pay severance for people up to approximately 26 weeks. Their severance package went from 1 week for every year you were there, 1 week for every $10,000 plus your vacation pay. We received nothing. This is in their policy and procedural manual. This has left everybody in a desperate situation, no insurance, no money.

They did give us, I guess I say a token of $4,500 when they went to bankruptcy court, the people who left that day. With taxes and everything, it came to maybe $3,000. And I feel that the bankruptcy court, we should have a say in the court and we should have a say that we should be entitled to the severance pay.

Senator VOINOVICH. I had the same thing in Cleveland with LTV Steel that is in bankruptcy. The people that were running it gave themselves golden parachutes.

Ms. PERROTTA. Exactly.

Senator VOINOVICH. They bailed out, took their money, and the employees got stuck. What you are suggesting is to possibly look at the bankruptcy laws that will not allow these people who have been bad managers to take care of themselves and then ignore their employees. I think that is a good suggestion.

Mr. Miller, do you have any other suggestions?

Mr. MILLER. Only that if an employer is to match their stock with the employee savings plan, you need a 60-day to 90-day rollout.

Senator VOINOVICH. Pardon me?

Mr. MILLER. A 60 to 90-day rollout. I am issued the stock. I have got to hang onto it for 90 days, or up to 120 days, not any 3- or 5-year stuff. What you need to be able to do is——

Senator VOINOVICH. You are talking about stock that the employer——

Mr. MILLER. Matches the employee.

Senator VOINOVICH. OK. That is their contribution?

Mr. MILLER. Right.

Senator VOINOVICH. And in this particular case, it was their stock that they were giving you as part of their participation in the 401(k).

Mr. MILLER. True.

Senator VOINOVICH. OK.

Mr. MILLER. The other one would be if it is an employee-employer, the employee should have the same rights as perhaps a Taft-Hartley type of trust, to have participation on that plan to make sure that the information they are getting as a worker, representing that worker group, as a participant in that plan, that they have access to information. It is a lot better than it would be now because they have no information.

And the other type of request that I would ask for would be a PBGC type of a guarantee, much as you have in your defined benefit plan.

Chairman LIEBERMAN. A Pension Benefit Guarantee Corporation.

Mr. MILLER. Correct. And as Deborah said, the order of priority for bankruptcy, the worker is the last one in the food chain. They need to be raised up there.

Senator VOINOVICH. Mr. Chairman, this is interesting. The reason I was not here for the first part of the hearing, I was speaking to the National Conference of Retirement Funds, the State funds. The information that I got back from them is that they have had very little input with the Securities and Exchange Commission and they are very upset about it.

It seems to me that if we had more participation by the people who are protecting the retirement funds for public employees, that some of these changes would be more forthcoming. In my case in Ohio, they lost $124 million, both pension funds, and somebody has got to look out for their interests. I think that asking those organizations for their input, Mr. Chairman, on what they think, because they have got a little different attitude towards this thing than some others, might be very, very helpful, I think, to deal with the problems that you have encountered.

Ms. PERROTTA. Mr. Chairman, I just want to clarify one thing. When I said $105 million, that was the amount of money they did receive. But the first initial payment was $55 million and the other amount was given at a later date.

Chairman LIEBERMAN. The $55 million was 2 days before the bankruptcy?

Ms. PERROTTA. Right, and then the balance was given after.

Chairman LIEBERMAN. I must say, in all the avalanche of information about the Enron collapse, that is one part of it that I had not heard or not focused on, and it does add insult to injury.

Ms. PERROTTA. Yes.

Chairman LIEBERMAN. We are all focused on the fact that the executives of the company were selling stock while they were pumping you up to buy more stock and stay in the plan, and then the lockdown, and now what you are saying is that 2 days before the bankruptcy, they essentially paid themselves, gave themselves enormous severance and bonuses, and then went into bankruptcy, which deprived the average workers at the company of their right to severance.

Ms. PERROTTA. Exactly.

Chairman LIEBERMAN. Now you have got to wait in line in the bankruptcy proceeding and you may well not get—you certainly will not get dollar for dollar what you are entitled to. But in the meantime, as Ms. Perrotta said to us in her testimony, colleagues, before you were here, she and her family are dealing with expenses and difficulty in paying them.

Thanks, Senator VOINOVICH. Senator Cleland.

## OPENING STATEMENT OF SENATOR CLELAND

Senator CLELAND. Thank you, Mr. Chairman. I sit on three committees looking into the Enron debacle and I feel a certain "Alice in Wonderland" quality about all this. It gets curiouser and curiouser every hearing I am in. Every time I hear about the actions of the leadership of Enron, it just makes my blood boil because of the callous way in which they regarded people who put their trust in them. We now know that the Enron top 28 officers ran off with about $1 billion worth of investments to their own aggrandizement, and at the same time freezing the ability of their own employees to do the same.

It is amazing to me that this company has had such a devastating impact on so many people. In my own State, I have run across families who had investments in the 401(k) plan and they put all of their investment in the 401(k) plan and they have themselves had to declare bankruptcy, and this is in a very wealthy, affluent part of suburban Atlanta. The head of that household is now sacking groceries at Kroger.

This collapse of this company has had a devastating effect on people's lives, particularly in my State, not only among Enron employees and the devastation of the 401(k) programs, but in terms of teacher retirement programs and employee retirement programs for the State of Georgia, where we have lost $127 million. We have teachers out there, elderly teachers who have given their lives to the State and to teaching, who now wonder whether they are going to be taken care of or not.

So this is a very serious matter we are approaching here. I would like to thank Mr. Joseph Szathmary for coming from Northern Trust Retirement Consulting, which is a company headquartered in Atlanta, and we hope you can give us some insight into some recommendations.

I am greatly disturbed by what has gone on at Enron, apparently a company with a culture of corporate deception and fraud starting at the top. The apparent actions of Ken Lay and Enron's executives placed retirement plans of all of their employees at risk. In the wake of Enron's bankruptcy and the precipitous drop in the value of its stock to less than $1 now, many employees and former employees have watched their retirement savings evaporate.

All employees who contributed to Enron's 401(k) plan held Enron stock because Enron matched the employee's contribution with company stock. The company placed restrictions on the liquidity of the Enron stock, locking down employer contributed stock until an employee reached the age of 50. Many employees also placed portions of their contributions to their 401(k) plan into Enron stock by their choice because, based on the information available to them, they felt the stock was a good buy, something we now know was fraudulent at the time.

The problem here is not so much with the rules regulating 401(k) plans but with the restrictions that companies placed on them, the lack of investor education, and the risk involved in investing in the stock market itself. Employees in Enron had many of their assets tied to the company with little or no guarantee.

In light of the tragic circumstances that Enron employees are facing, I feel we need, Mr. Chairman, to take a look at limiting the restrictions that a corporation can place on when and how often its employees can change their investments. We need to make sure that employees are well informed of the investment risk they are taking and we need to ensure that they are also informed that the 401(k) or similar savings plan is the dessert in the retirement meal and not the main course.

I feel employees should have a safe means of providing for their retirement through an employer defined benefit plan and Social Security. Social Security has provided a wonderful safety net for workers for more than 60 years. Many State retirement systems, as I mentioned, like Georgia's, lost money in the Enron debacle. Fortunately, the total effect on Georgia's retirement system was minimal, but the collapse of Enron and its effects on investors certainly raises concerns about reforming Social Security itself.

Social Security is a guaranteed benefit that several generations have been able to rely on, and in light of the dire circumstances that a number of Enron employees are facing relative to the drastic decline in the value of their pensions, I believe it is necessary that we maintain and strengthen the solvency of Social Security. We have learned the value of that program if we have learned nothing else. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Cleland. Senator Durbin.

**OPENING STATEMENT OF SENATOR DURBIN**

Senator DURBIN. Thank you very much, Mr. Chairman. I appreciate this hearing and I apologize to the two witnesses that I was unable to be here to hear your testimony, but I have read your testimony and I am glad that you are here to tell us your side of the story. I am also glad to see my colleague and friend, Reverend Jesse Jackson, who has really highlighted the abuse of Enron employees. Thank you for all that you have done on this.

I try to put this in some historical perspective. Congress for the past 100 years has been there when we see a clear exploitation of workers. If it was a sweatshop, we would come in and say, no, we want a 40-hour work week. We made it a law. If people were being abused, we would create a minimum wage. Now, this goes back aways, but we did it. Safety in the workplace, we said you just cannot leave it to businesses to make these decisions because, frankly, if they make them, sometimes people are going to get hurt, so we have got to have a safety net for workers. The same thing when it comes to child labor ban, you name it. We have stepped in.

I think with this Enron example and how employees were treated across America, based on your testimony, there is another challenge for us. When it comes to pension security, will we step in and say we do not provide a protection? If the government does not provide a protection, workers will be exploited. Exhibit No. 1, Enron. Take a look at what happened there.

Mr. Miller, you really spelled it out so well in terms of your workers. Eight employees with 188 years of cumulative service who lost $2.8 million, money that they had saved, scraped together for the day when they would finally retire and enjoy a comfortable life, all gone.

Mr. MILLER. Right.

Senator DURBIN. At the same time, the Powers Report, this analysis of Enron, has these outrageous stories of some of the officers of Enron turning—one in particular turned a $25,000 investment into a $4 million profit in a matter of weeks.

So here you have 188 years of cumulative loyal service to Enron evaporating in 1 year, while at the top, they are pulling a fast one. They are making money hand over fist. That is just fundamentally unfair and unjust.

But the thing that I think really gets to me is something that Reverend Jackson and I talked about on the phone the other day, is the fact that when they knew they were headed into Chapter 11, they started giving out these generous bonuses, retention bonuses, to people at the top. When the merger with Dynegy was on the way, Enron awarded $50 million in retention bonuses to 75 people. This is early November. On November 30, 2 days before the bankruptcy filing, Enron electronically transferred bonuses of $55 million into 500 employee accounts.

From all that we can tell, this is legal. In the bankruptcy court, this is legal. Now, if you or I were going to file personal bankruptcy, the court would say, what have you done in the last few months in anticipation of this bankruptcy? We may void it. We may say you cannot have those transfers.

But when it comes to Chapter 11, the company can take diminished assets in a bankrupt corporation, give them away to the folks at the top, and it is all just fine. And yet when it comes to your severance pay, you did not get an electronic transfer. You got some sort of a promise that it might happen in bankruptcy court. What a contrast. For the officers, they automatically get the millions, no questions asked. For the employees, get in line and hope that there is something left over.

So the real bottom line question here is whether this whole concept, this corporate culture that employees are just expendable—we can use them for 188 years—these eight employees, cumulative service, wipe them out, all their pension savings, give them a severance check but tell them to get in line with all the creditors for Chapter 11.

I think Congress is learning a lesson here, but I think what the stock market is telling us every day is that the American business scene had better learn a lesson, too. This is unacceptable conduct. If we have to pass laws to protect people, that has to be done, and I hope that we have the skill and the nerve to do it in the weeks ahead.

As I said at the outset, if this is about face time on television, we are going to get plenty of it. But if we do not end up protecting employees, changing the law so that people like those that are at this table today and those friends and colleagues they represent are protected, then we have wasted our time. Thank you for your testimony.

Chairman LIEBERMAN. Thanks, Senator Durbin. Ms. Perrotta.

Ms. PERROTTA. My colleagues wanted to mention something that they think is important while we are here.

Chairman LIEBERMAN. Go ahead.

Ms. PERROTTA. That we were informed, we were told that, for instance, there are two major people who are members of the Executive Committee. Just the two of them on that retention bonus received $3 million.

Chairman LIEBERMAN. The Executive Committee of the company overall?

Ms. PERROTTA. Yes, members of the Executive Committee. And Ken Lay, now that he is retired, he gets $475,000 for life, and I guess our question is, why could they not pay $150 million to the people that were let go?

Chairman LIEBERMAN. It is a powerful question without a good answer. I think something else we have to say, which is obvious to you but may not be generally, Enron has gone into bankruptcy but it is still a functioning company——

Ms. PERROTTA. Yes, it is, and they still have assets——

Chairman LIEBERMAN [continuing]. With, what, 19,000 employees, and a lot of money passing through it. Why this company cannot find a way to give severance to those of you who worked hard for it and believed in it almost to a fault, really, pains me. When you put that together with the granting of these retention bonuses, taking care of themselves 2 days before bankruptcy, it makes their behavior seem all the more callous and all the more conniving.

I urge you to just keep pushing forward and we are going to do everything we can to give you redress, not just to protect others in the future, but to see if we can help be advocates for you now as you try to get, not just justice, but the means to take care of your families.

Mr. Miller, last word.

Mr. MILLER. Can I ask a question of the Committee? I do not know if that is proper or——

Chairman LIEBERMAN. It usually does not work that way. [Laughter.]

Mr. MILLER. This is somewhat tongue in cheek, but really serious. I had the opportunity to talk to these Enron employees that I had never met before yesterday.

Chairman LIEBERMAN. Yes.

Mr. MILLER. Could we have one-tenth of one percent of the $2 trillion defense budget for these people that got taken? That is just a question.

Chairman LIEBERMAN. That is a good rhetorical question. [Laughter.]

I think we will answer it as the appropriations process goes forward. [Laughter.]

Thanks very much. We are going to go on to the next panel.

Senator VOINOVICH. Mr. Chairman, I would like permission to have my statement inserted in the record.

Chairman LIEBERMAN. Yes, without objection, Senator Voinovich.

[The prepared statement of Senator Voinovich follows:]

## PREPARED STATEMENT OF SENATOR VOINOVICH

Good morning, Mr. Chairman, and please accept my apologies for being late. I would like to express my appreciation to you for holding this second hearing in what I believe will be a very informative series of hearings into what went wrong at Enron.

I have just returned from a speaking engagement before the National Conference on Public Employee Retirement Systems, where we were sharing our mutual support for keeping public employee retirement pensions out of the Social Security system. While most of the discussion centered on the impact the Social Security mandate would bring to millions of state and local public employees and retirees if it was enacted, about one quarter of my remarks focused on the misfortunes at Enron, and the impact its bankruptcy has had on our public pension systems.

Mr. Chairman, in my state of Ohio, our public employee pensions have lost about $127 million that was invested in Enron, and two of our funds are currently involved in a lawsuit to get the money back. In the wake of the Enron debacle, I believe it is important for the public pension plans, as huge institutional investors, to get involved in financial market oversight. We touched upon this issue briefly at our January 24 hearing, and I hope this Committee will revisit investor involvement in financial market oversight again soon.

It is my hope that the information this Committee gathers from these hearings will allow for the development of real and productive changes; changes that can ideally prevent another Enron debacle from happening again and, particularly, avoid the kinds of financial hardships it has caused.

Today's hearing focuses on one major aspect of the Enron collapse, and it is an issue of extreme importance to virtually every American—the solvency of his or her own retirement package. In this case, it is the virtual evaporation of 401(k) plans for Enron employees.

As my colleagues know, 401(k) plans were created by Congress to encourage companies to work with their employees to provide an established retirement account enabling employees to set aside tax-deferred income for their retirement investment purposes. For most enrollees, it will be a critical element of their overall retirement nest egg.

While the inherent nature of 401(k)'s is risky, I doubt that most Americans who are enrolled in 401(k) plans have given much thought to the possibility that the money set aside in their plans could completely vanish before their eyes. That is, until they heard what happened to the employees at Enron.

Over the past year, many Americans have suffered losses in their stock portfolios and 401(k) investments as the stock market has steadily declined. However, few have seen the kinds of losses in retirement savings as have occurred at Enron. Mr. Chairman, I have genuine empathy for the employees of Enron. They have been through a lot. Still, it is my hope that their experience serves as a wake-up call to millions of Americans to pay careful attention to their investments and how investments are made on their behalf.

In fact, that's already occurring. As a result of Enron's collapse, there are numerous concerns about the viability of 401(k) plans being expressed by plan participants nationwide. In Congress, various legislative proposals have surfaced to prevent future retirement savings accounts from losing their assets in such a fashion as happened at Enron. Considering the potential consequences of acting to regulate individual's retirement savings, I think we should give careful consideration to each one of these proposals before we proceed.

Such consideration, in my view, was evidenced in the working group convened by President Bush to examine whether the current regulation of retirement plans is adequate, and whether and how much individuals should diversify their 401(k) retirement investments.

Last Friday, the President released the findings of this working group and recommended several key pension protections for employees. I am encouraged that these protections will help shore-up employee confidence in 401(k) plans.

Mr. Chairman, I would like to extend my thanks to today's witnesses—both the employees at Enron who have suffered severe personal losses as a result of this bankruptcy, and the administrative groups responsible for the operations of the retirement plans—to discuss how all of this could have happened. I believe hearing their experiences today will be a real service to the American people. In fact, I think one of the most important lessons Americans can learn from Enron—and from these hearings—is that, as investors, it is incumbent upon each of us to pay close attention to our investments.

The public's confidence in our Nation's retirement planning system has been shaken, and we need to restore that public confidence in both the financial markets and the government regulatory framework. That said, we should not throw the baby out with the bath water; reforms must not discourage future investment sin 401(k) plans. People must continue to save and invest for retirement. I view the President's recommendations as an excellent start in that direction, and it is my hope that the Committee will give serious consideration to actively pursuing his proposals.

Thank you Mr. Chairman.

Chairman LIEBERMAN. We are going to call Catheryn Graham, Cindy Olson, Mikie Rath, and Joseph Szathmary. I would ask you, as you come to the table, to please stand and raise your right hands.

If you would raise your right hands, please, and respond. Do you swear that the testimony you are about to give to this Committee today is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. OLSON. Yes.

Ms. RATH. I do.

Mr. SZATHMARY. I do.

Ms. GRAHAM. I do.

Chairman LIEBERMAN. Please be seated. The record will show that the witnesses have responded in the affirmative to the question.

Let us start with you, Ms. Olson, Executive Vice President, Human Resources, Employee Relations and Building Services of the Enron Corporation. We thank all of you for coming. You are important parts of the story here and what you testify to will help Congress deal with this in a constructive and thoughtful way. Ms. Olson.

## TESTIMONY OF CINDY OLSON, EXECUTIVE VICE PRESIDENT, HUMAN RESOURCES, EMPLOYEE RELATIONS AND BUILDING SERVICES, ENRON CORPORATION

Ms. OLSON. Good morning. My name is Cindy Olson and I am the Executive Vice President responsible for human resources and community relations for Enron. I am here to respond to questions concerning the impact of recent events on the 20,000-plus participants of our benefit plans.

I do not feel, however, that I am able to address the bigger issue of how it came to pass that our company fell so far so fast. One internal report has just been released and I know that this Committee, other Congressional committees, other government investigations, and ultimately the courts will continue to investigate what went wrong at Enron. I hope to help the Committee assess the consequences of Enron's demise for our employees and retirees and their families.

With me today is Mikie Rath, the manager of our benefits area. I hope we can show you that the people who ran the benefits plan did the best they could with a difficult situation.

At Enron, we gave our plan participants many choices for their investment decisions. The 401(k) plan offered participants 20 different investment options for their retirement savings. Mr. Chairman, I hope that my participation in this hearing and your investigation helps the Congress as you consider legislation that can create better ways to protect the retirement plans of workers. Such legislation perhaps could promote diversification, facilitate companies' ability to provide better investment advice, or include appropriate steps that experts suggest.

I will be happy to answer any questions you have. Thank you.

Chairman LIEBERMAN. Thanks, Ms. Olson. Now we will go to Ms. Rath.

Ms. RATH. Good morning.

Chairman LIEBERMAN. Just by way of a description, you are a Benefits Manager at Enron Corporation.

**TESTIMONY OF MIKIE RATH, BENEFITS MANAGER, ENRON CORPORATION**

Ms. RATH. That is correct. My name is Mikie Rath and I am the Benefits Manager at Enron. Like Ms. Olson, I am appearing here voluntarily this morning to answer your questions concerning Enron's tax qualified retirement plans. As a person with the day-to-day responsibility for administering Enron's benefit plans, I hope to explain the structure of our plan and the events surrounding Enron's transition from Northern Trust to Hewitt. As to the circumstances that led to Enron's downfall, my knowledge is limited to what I have heard reported in the press.

Enron's 401(k) plan offers a menu of 20 investment options, including a diverse selection of mutual funds, a Schwab account that functions in many respects like a self-directed brokerage account, as well as Enron stock. Enron also enhanced its employees' contributions with a matching benefit in company stock. This benefit was added to the program in 1998.

Participants are free to trade the investments they select in their 401(k) accounts on a daily basis, including the Enron stock. However, like many companies that provide matching contributions, Enron's plan design restricted participants from trading the company's matching stock contributions until they reached age 50.

Enron sought good service providers for its benefit plan participants. After Enron outsourced its benefits services in 2000, it became clear that Northern Trust had difficulty providing the level of service demanded by Enron's employees. In January 2001, Enron began searching for a new benefits administrator, and after a request for proposal process, we selected Hewitt in May 2001.

When large companies change 401(k) service providers, a temporary suspension of trading in the plan is typically needed in order to allow account information to be reconciled by the old administrator and then accurately transferred to the new administration's computer system. This temporary suspension, which has sometimes been referred to as a lockdown or a transition period, can take several weeks.

In Enron's case, Enron, Northern Trust, and Hewitt worked together to shorten that time period as much as possible without sacrificing the integrity of participants' accounts. Ultimately, the trading suspension encompassed 11 trading days, from October 29 to November 13, 2001. Enron mailed a brochure to all participants some 3 weeks before the trading suspension explaining the transition period and notifying all participants of the temporary suspension. Enron employees with E-mail accounts received additional reminders in the days that led up to the transition.

Unfortunately, as the Committee is no doubt aware, the commencement of the transition period coincided with certain bad news about the state of Enron's finances. We considered postponing the transition, but found it was not feasible to notify more than 20,000 participants in a timely fashion. As the Enron news continued to break, we and the plan's Administrative Committee again considered stopping the transition. However, in addition to the problem of notifying participants, it would actually have taken longer to reverse the transition than to finish it. Ultimately, we worked with Hewitt to shave 1 week off the transition period and we implemented a process for notifying participants of the early resumption of trading.

I hope my testimony can be helpful to you and I will be happy to answer any questions.

Chairman LIEBERMAN. Thanks, Ms. Rath. We will come back to you with questions. Obviously, you have added some new information here in regard to the consideration of the postponement of the lockdown period and I know we would like to ask you about what the circumstances were and why you chose not to do it.

Mr. Szathmary is an associate with Northern Trust Retirement Consulting. Thanks for being here.

**TESTIMONY OF JOSEPH P. SZATHMARY,[1] ASSOCIATE, NORTHERN TRUST RETIREMENT CONSULTING, LLC**

Mr. SZATHMARY. Good morning, Mr. Chairman and Members of the Committee. My name is Joseph Szathmary and I am an associate at Northern Trust Retirement Consulting. In that position, I was in charge of client relations for the Enron Corporation account with NTRC.

I am a native of Brooklyn, New York, and a graduate of the State University of New York at Oneonta. I have worked in the retirement plan services industry for 20 years. In 1992, I moved to Atlanta, Georgia, and began working for NTRC in 1999. I appreciate the opportunity to explain to you the administrative services provided to Enron by NTRC.

NTRC offers a variety of services to assist retirement plan sponsors in administering their programs. Headquartered in Atlanta, Georgia, the company employs approximately 600 people. From October 1993 until November 1, 2001, NTRC acted as the recordkeeper of the Enron 401(k) and several other Enron retirement plans.

Pursuant to the Enron 401(k) services agreement, NTRC agreed to perform certain ministerial and recordkeeping functions for Enron and the Enron 401(k) Administrative Committee, an entity comprised entirely of Enron personnel. The services agreement provided that the duties and responsibilities assigned to NTRC were to be performed within a framework of policies, interpretations, rules, practices, and procedures established by Enron and the Enron Administrative Committee. The services agreement did not give NTRC any discretion with regard to the management of the Enron 401(k) or the management, investment, or disposition of plan assets. More specifically, as recordkeeper, NTRC did not es-

[1] The prepared statement of Mr. Szathmary appears in the Appendix on page 99.

tablish the terms and conditions of the Enron 401(k), including investment options.

In July 2001, Enron formally informed NTRC that it had decided to transfer their recordkeeping services for its 401(k) to Hewitt Associates. Enron informed NTRC that it would terminate the services provided by NTRC effective October 1, 2001. In August 2001, Enron changed that date to November 1, 2001.

As is customary, Enron in its capacity as the plan sponsor and Hewitt Associates in its capacity as the incoming recordkeeper designed and directed a plan for transition. NTRC did not set the conversion date or the timetable for the conversion of the recordkeeping and administration of the Enron plan.

On October 25, 2001, Enron telephoned me to inquire about NTRC's ability to further delay the conversion and requested a January 1, 2002, transfer date. I said that NTRC could further delay the conversion period, but the January 1 date could present problems because of year-end processing demands. I suggested that a March 31, 2002, conversion date would be preferable. Later the same day, Enron notified me that the Enron Administrative Committee had decided that the transition would take place on November 1, as previously planned.

It is standard industry practice for daily valued plans to suspend participant activity, including investment choices, during part of the period of transition from one service provider to another in order to ensure that participant records are properly reconciled. The length of time of suspension periods varies depending on the complexity and size of the plan.

The suspension period, plan, and timetable applicable to the Enron 401(k) were proposed by the successor recordkeeper, Hewitt Associates, and subsequently approved by the Enron Administrative Committee. NTRC did not set or control the suspension period applicable to the Enron 401(k).

The suspension period of the Enron 401(k) began on October 29, 2001. This was the first business day in which the participants in the plan were unable to transfer balances into or out of the various investment options. As discussed, Hewitt Associates became the recordkeeper on November 1, 2001. I understand that Hewitt Associates restored the participants' ability to transfer plan balances on November 13, 2001.

Finally, I would like to stress that NTRC performed all of its duties properly, professionally, and responsibly. NTRC fully complied with all of its obligations in connection with its administration of the Enron 401(k) and the transition of the recordkeeping services for that plan.

Again, Mr. Chairman and members of the Committee, thank you very much for the opportunity to testify today. I would be very happy to respond to any questions you have.

Chairman LIEBERMAN. Thanks, Mr. Szathmary. You added more to our information of the consideration of postponing the lockdown and we will come back to you with questions.

Catheryn Graham is the Engagement Manager, Total Benefits Administration Business Group of Hewitt Associates.

## TESTIMONY OF CATHERYN GRAHAM,[1] ENGAGEMENT MANAGER, HEWITT ASSOCIATES, LLC

Ms. GRAHAM. Good afternoon. Mr. Chairman and Members of the Committee, I am Cathy Graham of Hewitt Associates. Hewitt Associates is a leading provider of human resources, outsourcing, and consulting services.

Let me at the outset say that we at Hewitt feel for the Enron employees who have suffered these losses. Being based in Houston, many of these employees were friends, family, and neighbors of people who worked at Hewitt and we do feel for them. We are, therefore, pleased to have this opportunity to assist the Committee in its important responsibilities.

Hewitt was selected by Enron to become the new recordkeeper for the Enron 401(k) plan in May 2001, after a competitive bidding process. The recordkeeper's job includes maintaining the plan's records and processing all transactions by plan participants, including contributions, investment elections, and withdrawals.

Our role as recordkeeper for the Enron 401(k) plan is important, but limited. For example, we did not design Enron's 401(k) plan or determine its investment options. Those and other discretionary decisions are matters for the plan's sponsor and its fiduciary to decide, which in this case are Enron and their Administrative Committee.

Let me now turn, as the Committee has requested, to the selection by Enron of Hewitt as recordkeeper for their 401(k) plan and the transfer of those responsibilities to Hewitt. I was designated as the Engagement Manager shortly after we were selected in May 2001. Our team at Hewitt had three basic jobs. First, we had to agree with Enron exactly what services we would provide and how we would provide them. This is known as the requirements process. Second, we had to adapt Hewitt's recordkeeping system, Internet, and call center to the specific provisions of Enron's plan. Third, we had to receive participant data from the outgoing recordskeeper, place it on our system, and test it to assure its accuracy.

The day on which all this work is complete and participants can acess their accounts is known in the human resources industry as the live date. During the recordkeeper selection process in 2001, Enron informed the bidders that the live date would occur during October. After we had been selected, Enron designated October 23 as the live date. As I will explain in a moment, Mr. Chairman, this original live date changed twice as our work went forward.

Enron also designated a transition or blackout period that would begin on September 14 and end on the live date of October 23. A blackout period is designated, first, to enable the outgoing recordkeeper to close its books, and second, to enable the new recordkeeper to receive the data, load it on its system, and test its accuracy.

During a blackout period, participants have restricted access to their accounts. Under the original timetable established by Enron, the blackout period had two phases. First, participants would be subject to certain restrictions, such as loans and withdrawals, from

[1] The prepared statement of Ms. Graham with attachments appears in the Appendix on page 104.

the close of business beginning on September 14. Second, changes in investments would not be permitted during a shorter period beginning with the close of trading on Friday, September 26. Participants would again have full access to their accounts and could change investments starting on October 23.

In mid-August, Enron informed us of certain plan changes. We informed Enron that these changes would require an additional 2 to 3 weeks for Hewitt to complete its work. Enron set a new live date of November 20. The blackout period was rescheduled, also. Under the new schedule, the blackout on changes in investments would begin at the close of trading on Friday, October 26, and end on November 20.

On October 25, almost a week into the first phase of the blackout period, Enron asked us to consider and respond that afternoon to questions involving the practical effects of shortening the blackout period. They also mentioned that they could bring the whole process to a halt and wait until the following February or March. Finally, Enron told us that their lawyers believed that Enron had met its fiduciary obligations under ERISA with respect to the blackout period if they did decide to go ahead.

Later that day, based on the information we had, we identified for Enron a series of operational and systems effects of accelerating the live date. We also said that one of our consultants had, after a brief conversation, concurred in Enron's ERISA analysis, but we also emphasized that Hewitt does not provide legal opinions or advice and that Enron would need to rely on their own counsel. Finally, we identified for Enron various factors it should consider in deciding whether to postpone the entire transition, including confusion it may cause among participants, costs, staffing implications, and the inability to predict any future fluctuations in Enron stock.

We told Enron that we would, of course, assist them in implementing any decision they made. Later that same day, we were informed by Enron that there would be no schedule changes. As a result, the restriction on changes in investments took effect at the close of trading the next day, October 26.

Ultimately, we did accelerate the live date by a week to November 13. We did so at the direction of the Enron Administrative Committee at a meeting held during the afternoon of November 1, after the plan's assets had transferred to the new trustee that morning. We received the necessary data to load to our system on Wednesday, November 7, and we went live on Tuesday, November 13, at which time participants could make changes to their investment allocations.

Thank you, Mr. Chairman, and I would be more than happy to answer any questions you or the Committee may have.

Chairman LIEBERMAN. Thanks, Ms. Graham. Thanks very much.

We will now begin the round of questions. Ms. Olson and Ms. Rath, on the previous panel, as you heard, Ms. Perrotta talked about the employees' anger with the retention bonuses, so-called, that were given to top executives a couple of days before the bankruptcy was declared and then contrasted that, obviously, to the difficult circumstances that they are under because they have not gotten but a pittance of their severance. This not only outrages them, obviously, it outrages all of us who hear it because it adds to the picture the people at the top were taking care of themselves and others were getting taken. Are the facts as reported to us basically as you know them in regard to these retention bonuses?

Ms. OLSON. I was not involved in the retention bonus process at the time. I was primarily responsible for employee relations and not the compensation, so I did not have any involvement in those bonus payments. So anything I would say would be hearsay. I cannot tell you for sure that is true.

Chairman LIEBERMAN. Ms. Rath, do you have anything to add?

Ms. RATH. No, sir, I do not. I know there were people that were in charge of determining who was leaving and who was——

Chairman LIEBERMAN. Come a little closer, if you would, to the microphone.

Ms. RATH. There was an entire group of HR and compensation people involved in who was staying and——

Chairman LIEBERMAN. A different section of human resources. Did either of you receive retention bonuses?

Ms. OLSON. I did not.

Ms. RATH. I did.

Chairman LIEBERMAN. You did? For how much, do you remember?

Ms. RATH. I do not remember the gross amount, no, sir.

Chairman LIEBERMAN. Generally?

Ms. RATH. In excess of $20,000.

Chairman LIEBERMAN. And who decided that, do you know? Who decided who would receive retention bonuses?

Ms. RATH. I do not know who decided.

Chairman LIEBERMAN. Do you know, Ms. Olson?

Ms. OLSON. No. I was not involved. I can only assume, and I hate to do that.

Chairman LIEBERMAN. Yes. The Committee will pursue this by subpoena as we go forward.

What about the severance payment question? Does that fall under either of you?

Ms. OLSON. I can assume. It did not fall under me specifically, but I was involved in some conversations with Mr. Lay and others on the severance payment.

Chairman LIEBERMAN. And why don't you describe those conversations to us.

Ms. OLSON. We thought that, initially, that we could give the employees their full severance.

Chairman LIEBERMAN. Does the number that Ms. Perrotta mentioned sound right to you?

Ms. OLSON. Right.

Chairman LIEBERMAN. Which was $105 million total?

Ms. PERROTTA. A hundred-and-fifty million dollars.

Ms. OLSON. Probably. The formula that she laid out was the formula that was our severance plan at the time. We thought we could give full severance to the employees as they were leaving. In the course of the next few days, we were told by our attorneys that we were not going to be able to and they thought we could probably get the WARN Act, which is 60 days. At the 11th hour, we found out, to everybody's—everybody was devastated by this, that we could only give the $4,500, and——

Chairman LIEBERMAN. And that was——

Ms. OLSON [continuing]. And those were the conversations that I was involved in.

Chairman LIEBERMAN. And that was a matter of law, as far as you know?

Ms. OLSON. As far as I know, but I was not involved in the conversations with the——

Chairman LIEBERMAN. You were just hearing the results of them. All right. We will pursue that further, too.

Ms. Olson, as you well know, you have been named as a defendant in some of the securities fraud action lawsuits, in part, I gather, because of an allegation that in the last 3 years, you reportedly sold 83,000 shares of stock for a total of over $6.5 million. Is that correct?

Ms. OLSON. That is correct.

Chairman LIEBERMAN. In other words, those numbers are correct, to the best of——

Ms. OLSON. Those numbers are correct.

Chairman LIEBERMAN. It is my understanding that the last time you filed notice with the SEC of such a sale was in March 2001——

Ms. OLSON. That is right.

Chairman LIEBERMAN [continuing]. For proceeds of approximately $500,000 in stock sales. Have you sold any other Enron stock since that time, either on the market or back to the company?

Ms. OLSON. The only thing that I have sold is I had 3,000 shares of my ESOP left and a couple days before we filed bankruptcy, I moved those shares into my 401(k).

Chairman LIEBERMAN. You moved them into your 401(k)?

Ms. OLSON. I sold them and moved them into my stable asset, my 401(k).

Chairman LIEBERMAN. In other words, you moved the cash into the——

Ms. OLSON. Right.

Chairman LIEBERMAN [continuing]. Your 401(k). At any time that you made any of those sales, were you aware of the improper accounting at the company?

Ms. OLSON. No, I was not.

Chairman LIEBERMAN. Were you aware of the fact that the company's financial statements did not reflect the true state of the company's finances?

Ms. OLSON. No, I was not.

Chairman LIEBERMAN. Or allegations by anyone to that effect? On the final sale that you describe of 3,000 shares, there must have been some connection between the impending bankruptcy and your sale of those. Was there?

Ms. OLSON. Yes. I thought that if we did file bankruptcy, that those shares would probably be worthless, so I moved them to my cash account and I think I—they were worth $2.

Chairman LIEBERMAN. In other words, when you sold them, you sold them at $2 a share?

Ms. OLSON. Right.

Chairman LIEBERMAN. Did you know for a fact that the company was going into bankruptcy at that point?

Ms. OLSON. No, I did not.

Chairman LIEBERMAN. But you thought it probable, as a lot of others did. Let me just, in some of the time I have left, go on to the work that the Administrative Committee did, which you, Ms. Olson, were a member of. As you know, in the Enron Corporation's savings plan document, the Administrative Committee is given a fiduciary duty, and I want to describe what it says there, "to discharge your duties and responsibilities solely in the interest of the participants for the exclusive purpose of providing benefits to participants and their beneficiaries and to discharge those duties with care, skill, prudence, and diligence, and to diversify the investments of the plan so as to minimize the risk of large losses." Tell me what authority the Administrative Committee had to diversify the investments of the plan.

Ms. OLSON. We felt like our responsibility was twofold, one, to make sure that there were options in the 401(k) plan adequate for employees to diversify, and then, obviously, the pension plan investments, making sure that the money managers were providing returns that were good returns.

Chairman LIEBERMAN. The second part of your answer was with regard to a defined benefit pension plan, not to the 401(k)'s.

Ms. OLSON. Right.

Chairman LIEBERMAN. So you created, and all of us who are Federal employees in the Thrift Savings Plan know the model and the employees around know it, as well. You created a series of options that people could invest in.

Let me ask this. What specifically was your authority to buy or sell, or to put in or sell holdings that the 401(k) plans had in Enron stock itself? In other words, the company matched employee contributions. In Enron's case, correct me if I am wrong, all of the matching was in Enron stock, not cash.

Ms. OLSON. You are right.

Chairman LIEBERMAN. So what authority did you or anyone else have—obviously, I am thinking about as the company stock was sliding and executives were selling their stock, including yourself, to sell some of the Enron stock that the employees had that the company had put in?

Ms. OLSON. The Administrative Committee did not feel like they had the ability to change the plan design. The plan design is changed by the Board of Directors. So that was our position on that.

Chairman LIEBERMAN. So that there was no time during last year, and there is the picture, where the stock was way up close to $80 and now down under $1, where any of you on the Administrative Committee raised the question of whether you could either sell the Enron stock that the employer, the company, had put in, or would advise the employees to begin to sell some of their stock?

Ms. OLSON. In November, in early November, we hired counsel and also started looking for a financial advisor to help us decide if that made sense, because we did not have a crystal ball. We did not know where the stock was going to go. So we wanted professional advice.

Chairman LIEBERMAN. But I have got to ask, on the other hand, over the 3 years before, you sold $6.5 million worth of the stock yourself. So something motivated that in your case.

Ms. OLSON. Do you want me to describe what motivated me?

Chairman LIEBERMAN. Sure.

Ms. OLSON. OK. Most of the options that I sold, I sold in 2000 and 2001. I was promoted in 1999 to the Executive Committee of Enron, and in early 2001, Mr. Skilling removed me from the Executive Committee and took away a lot of the human resource functions that I had.

During that same time frame, my husband and I consulted with a financial advisor and he told me, like Deborah described, "You are very emotionally attached to your stock," and he said, "I would highly recommend that you need to diversify." He had to almost pry it out of my hands. And because of the fact that I had been removed from the Executive Committee, Mr. Skilling and I did not see eye to eye, I was considering leaving the company, and so I was selling my options and they were being put into government bonds by my financial advisor.

Chairman LIEBERMAN. That is a very powerful story, both because it reflects in you exactly what we heard from the Enron employees, which is this emotional devotion to the company, which was clearly inspired and encouraged by the company's management, and until the bubble burst, justified by the incredible increase in the stock.

But, of course, it forces me to ask why no one—and the advice that financial advisor gave you is just common sense, which most financial advisors would give any investors—but why no one, including the Administrative Committee you sat on, gave similar advice to the Enron employees.

Ms. OLSON. When you get financial advice, though, it is so individualized, it is hard for the Administrative Committee to say that, blanket, we should do something with people's retirement accounts because you have really got to look at how they individually are diversified.

Chairman LIEBERMAN. But surely you knew and the Administrative Committee knew that the employees were, by one report I have seen from the Labor Department, at the end of 2000, about two-thirds of the plan assets were in company stock.

Ms. OLSON. Yes, I understand that, but again, from an individual standpoint, you just do not know if someone is diversified or not.

Chairman LIEBERMAN. But you knew that the 401(k)'s were not diversified.

Ms. OLSON. True.

Chairman LIEBERMAN. Let me ask one last series of questions about this. The former company Vice President Sherron Watkins, as we know, now wrote a famous memo to Ken Lay in mid-August making clear to him, if he did not already know, that the company was a house of cards waiting to fall. It is my understanding, that I learned in the last day or so, that Ms. Watkins was moved into the human resources department on or about August 22, just 2 days after she met with Mr. Lay about the memo and just 1 week after she wrote the memo. Is that true?

Ms. OLSON. That is true.

Chairman LIEBERMAN. She was moved into your department——

Ms. OLSON. She was.

Chairman LIEBERMAN [continuing]. Into the human resources department. My understanding is that Ms. Watkins requested a transfer because of her discomfort with the financial practices of the company and particularly the department she had been working in. Is that true, to the best of your knowledge?

Ms. OLSON. That is true.

Chairman LIEBERMAN. She had told you that?

Ms. OLSON. Yes.

Chairman LIEBERMAN. Did you ever speak to her about her memo on the questionable accounting at the company?

Ms. OLSON. Yes. She came to me before she went to Mr. Lay and asked my advice, if she should go to Mr. Lay.

Chairman LIEBERMAN. She was a friend of yours, then?

Ms. OLSON. She was an acquaintance of mine.

Chairman LIEBERMAN. And what was the advice you gave her?

Ms. OLSON. She told me that the allegations in her memo, she did not know if they were technically or legally correct. She was very concerned about the perception and what she wanted was someone at a higher level and someone that had more knowledge of the transactions to look at those to tell her if she was right or wrong. And so she went to speak to Mr. Lay the next Wednesday and Mr. Lay kicked off an investigation of her allegations by Vinson and Elkins.

Chairman LIEBERMAN. Did you ever speak to anyone else in the company about your conversations with Ms. Watkins?

Ms. OLSON. The only other person that I spoke to was Mr. McMahon.

Chairman LIEBERMAN. Who is that? Would you identify him?

Ms. OLSON. Mr. McMahon was—at the time, he was in charge of our global products organization. He had been Treasurer at one point in time for Enron, and currently he is our COO of Enron.

Chairman LIEBERMAN. So you conveyed these to him and did you ask him if Ms. Watkins' concerns were justified?

Ms. OLSON. Actually, he came to me and said that she had asked him the same thing, if he thought her allegations were accurate, and he encouraged her to go to Mr. Lay, as well.

Chairman LIEBERMAN. So he certainly did not deny the truth of the accusations?

Ms. OLSON. No, but he did not have enough knowledge, either.

Chairman LIEBERMAN. But you did not talk to anyone else but him about your conversation with Ms. Watkins?

Ms. OLSON. No.

Chairman LIEBERMAN. Obviously, the final question, and I will yield to my colleagues, that I want to ask on this round is, having had those conversations with her both before she talked to Mr. Lay and afterward, why did they not lead you and/or her to urge the Administrative Committee of the 401(k) plans that the employees were so heavily invested in to take some action pursuant to the fiduciary responsibility you had in the plan, as I read at the outset, to protect the participants, the employees who your main responsibility was to?

Ms. OLSON. Again, she came to me asking my advice, if she felt like she should go to Mr. Lay to determine if her allegations were accurate. She had concerns that maybe she did not know something and so she thought that perhaps she was wrong. I did not feel like it was my position to go to the Administrative Committee and talk about hearsay specifically because it was an anonymous letter that she wrote to Mr. Lay. She came to me in confidence in my role as an employee relations manager. And it was in the hands of Mr. Lay and Vinson and Elkins and I felt like it was in good hands and all of us would know if it really was an issue.

Chairman LIEBERMAN. And, obviously, but for the record, I will ask you, Mr. Lay never came to you after the conversation he had with Ms. Watkins and said to you, as part of your fiduciary responsibility to the employees of the company, you ought to be advising them to begin selling some of their Enron stock?

Ms. OLSON. No.

Chairman LIEBERMAN. OK. Thank you. Senator Voinovich.

Senator VOINOVICH. You had stock options that were given to you and you were also participating in the 401(k)?

Ms. OLSON. Yes.

Senator VOINOVICH. The employer's share of the 401(k) had to be Enron stock, is that it?

Ms. OLSON. The match was Enron stock.

Senator VOINOVICH. Yes. So you contributed and as an inducement, the company put the Enron——

Ms. OLSON. Yes.

Senator VOINOVICH. And you could not touch that stock until age 50, is that the——

Ms. OLSON. That is correct.

Senator VOINOVICH. And did you have any stock in Enron besides the stock that the company gave you as a match?

Ms. OLSON. I had stock in the ESOP. I had been there for 23 years, so I got to participate in the ESOP in the early days of the company, so I still had stock in my ESOP.

Senator VOINOVICH. So you had the stock options, you had the Enron stock as part of their match, and then you had Enron stock in your portion of the ESOP?

Ms. OLSON. Right.

Senator VOINOVICH. OK. And the portion that you sold, your stock options, as you just said to Senator Lieberman, those were the stock options?

Ms. OLSON. Those were the stock options.

Senator VOINOVICH. You could not sell the Enron stock that the company matched because you could not sell it until you were 50. Did you do anything with the Enron stock that you had in the ESOP?

Ms. OLSON. No, not until, like I said, the day before it looked like we were going to file bankruptcy. Then I moved that to my stable asset fund in the 401(k).

Senator VOINOVICH. So the ESOP was separate from the 401(k)? So you had control over that. Did other people in the 401(k) have that same kind of option? Could they have done the same thing? You moved cash into the 401(k).

Ms. OLSON. Right.

Senator VOINOVICH. The question is, those that were in the 401(k), could they have sold that stock and converted it into something else as one of the other 20 options that were made available to them?

Ms. OLSON. Yes, they could.

Senator VOINOVICH. Did any of them do that, to your knowledge?

Ms. OLSON. I do not know.

Senator VOINOVICH. I would be interested to know. You got the message in your ESOP that maybe it was smart for you to get rid of the stock and convert it to cash and put it in the 401(k). What was the reason that you did that?

Ms. OLSON. Well, I had left the ESOP shares alone because I really did want to hold some Enron stock. At the very last minute, before it looked like we were going to file bankruptcy, I moved those shares into the 401(k) cash plan.

Senator VOINOVICH. But the fact is that it was right before bankruptcy. That is what triggered your decisionmaking?

Ms. OLSON. Right.

Senator VOINOVICH. At that stage of the game, could the other people that were in the 401(k) that had Enron stock as part of their 401(k), could they have done the same thing you did and converted it to cash and put that stock into cash and put it in the cash account?

Ms. OLSON. Yes, they could have.

Senator VOINOVICH. What was that date?

Ms. OLSON. The date I did that was probably November 29.

Senator VOINOVICH. So that was after this blackout period that the new—Hewitt had taken over there?

Ms. OLSON. Right.

Senator VOINOVICH. When the company decided to leave Northern Trust—and I am not trying to have you disparage Mr. Szathmary's company—there was a decision made that we want to go to a new plan administrator.

Ms. OLSON. Right.

Senator VOINOVICH. What was the reason for that?

Ms. OLSON. The primary reason was—and it started being looked at a couple years before I even was in HR—the primary reason was the service level. Our employees like to have a good level of service on all their benefits and the calls and the service level that we were getting from Northern Trust was not as good as we would like it to be.

Senator VOINOVICH. Do you believe that your people had good advice in terms of their investment and do you think that we should do better with 401(k) plans in terms of giving people information about decision making?

Ms. OLSON. We tried to talk about diversification with respect to choice in the 401(k). We threw benefit fairs and we gave some investment, what we call "brown bags," that employees could come and hear financial advisors talk. But there is a fine line that employers have with respect to giving investment advice, and so we were concerned about stepping over that line.

Senator VOINOVICH. Would you advise people in this country that have 401(k)'s that they pay more attention to what they have in their 401(k) and seek out private counsel to tell them what they ought to do with what they have in their 401(k)?

Ms. OLSON. Absolutely. I would also like to see the laws relaxed in that employers can help give their employees investment advice, because I do think that would have helped in the Enron situation. We gave them a lot of choice, which our employees wanted, but they did not have the information they needed to be able to make smart choices.

Senator VOINOVICH. And you were prevented from doing that under the current law?

Ms. OLSON. Yes, we felt like we were.

Senator VOINOVICH. I would be interested in knowing what those provisions are. That is something that we ought to be looking at. I think people ought to be getting outside counsel in terms of how they are investing their 401(k).

Ms. OLSON. Absolutely. From a personal standpoint, I would not have sold my stock if I had not gotten that advice.

Senator VOINOVICH. Now, there is something about this blackout period. The blackout period is when you are going from one administrator to another. Was there some reason why the time was delayed? You were going to do it earlier and then decided to do it a little later.

Ms. OLSON. Well, there were several processing issues, and I think Ms. Rath can probably talk to that in more detail. She was kind of on the ground implementing that at the time.

Ms. RATH. One of the funds that we had inside our 401(k) was an EOG stock fund. It used to be Enron Oil and Gas. We offered Enron stock and EOG stock inside our 401(k) plan. EOG became their own separate company with no ties to Enron in late 1999 and moved their assets out of that plan, I believe in early 2000. And we simply now had just an equity stock fund inside of our 401(k) plan.

When we were making the transition from Northern Trust to Hewitt, we had plans to get rid of that stock fund because it no longer had an Enron tie. It was just an arbitrary stock fund, and during the transition would have been an opportune time to stop it at the trust and not set the new recordkeeping system up to do that.

The Administrative Committee approved my recommendation that we eliminate that fund in May 2001 and we, in working with Hewitt, told them that we had plans to eliminate that fund. In either late August or early September, we were reviewing all of the plan amendments that were going to be required and we realized that we had to get plan amendments before our board by late September, and the uncertainty as to whether the Board of Directors would actually allow us to make all of these changes prompted me to let Hewitt know that we were going to keep that stock fund until it was administratively feasible to get rid of it.

Senator VOINOVICH. OK.

Ms. RATH. We had originally planned to transfer October 1. We just moved everything 30 days later. So all of the timeline deadlines were just moved to the following month. Hewitt had said they in Wilmington needed an additional 3 weeks. We just made it an even month.

Senator VOINOVICH. So the new dates were what again?

Ms. RATH. The transition——

Senator VOINOVICH. The transition period was?

Ms. RATH. October 19 was one date that loan applications were restricted. October 26 was the last day they could make a transfer in their 401(k).

Senator VOINOVICH. So that was the beginning of the blackout period, October 26?

Ms. RATH. Yes.

Senator VOINOVICH. And it was going to last until November something, and during that period, was that during the period where something started happening to the stock? You mentioned that you were talking about pulling back and not making the transition. What was the reason for that?

Ms. RATH. We were having an all-employee meeting at the end of October and all of the events had started to come to light about Enron.

Senator VOINOVICH. So the question was, do we go forward with the transition or do we stop it, and who made the decision that you ought to get it done?

Ms. OLSON. We made the decision in benefits as a result of our advice from counsel.

Senator VOINOVICH. OK. So you thought it was better to go forward and continue the blackout and get it done rather than stopping in mid-stream, basically?

Ms. OLSON. Yes, because we had already sent out notices to all the participants outside of the building, and half of the participants are retirees that are outside the building, so we had sent out notices. We had sent out a lot of E-mails. Our concern at the last hour was that we were not going to be able to get to—any kind of communication to the retirees that were outside of Houston, and primarily because this was the time of the anthrax scare and the postage, or the mail was moving very slowly. We looked at phone calls, but that was to 11,000 participants. We looked at Fed Ex packages. And on the advice of counsel, they said you will be treating employees or participants in the plan differently because they will not get notice of the change just like the employees within the building would.

Senator VOINOVICH. So they just said, stay the course and get it done, and my understanding is that it got done a week earlier than what you ordinarily do it, did somebody mention that? It was supposed to get done by what date, and you got it done a week earlier?

Ms. GRAHAM. The live date was set for November 20 and we went live on November 13.

Senator VOINOVICH. OK. Just for the record, that kind of a period of blackout, is that a long period of time or a short period of time?

Ms. OLSON. It is a short period of time, I believe. You guys can speak to that more than we can.

Senator VOINOVICH. What would be the ordinary blackout time? I know I think I went through this when I was in the State of Ohio. We went from one plan administrator to another. But I cannot recall how much time it was. What is the ordinary period in the business?

Ms. GRAHAM. I think for a plan the size of Enron's and the complexity of Enron's, that the blackout period that was set was standard.

Mr. SZATHMARY. I would agree with that, too, Senator.

Senator VOINOVICH. So it was the standard period, and the fact that it came in a week earlier, was that better than the standard or about the standard?

Ms. GRAHAM. From Hewitt Associates perspective, we went from—when Enron asked us to speed it up, we took four business days from the time we received the information from the Northern Trust and to put that information on our system and bring it up, so it did take a lot of hard work and effort on the part of our employees to make that happen.

Senator VOINOVICH. So it was not an extended period of time. It seemed to me that they were leaning on you to get it done rather than delay it during that period of time where everybody was really worried about their stock, but they could not do anything about it because they were locked into it, is that right?

Ms. GRAHAM. Accelerating——

Senator VOINOVICH. They could not move anything during that period. It was black, right?

Mr. SZATHMARY. That is correct.

Senator VOINOVICH. And that same thing happened if Ms. Olson had stock in there or, Ms. Rath, you had stock. You were all stuck. You could not move it.

Ms. RATH. All employees were.

Senator VOINOVICH. But the people who had the stock options, they were able to move their stock, correct, because the blackout did not hurt them. They were moving and got their thing taken care of. And then at the end of the blackout period, everything was pretty well shot, was it not?

Ms. RATH. I believe when we came out of the blackout period, the stock was still at $9 and something.

Senator VOINOVICH. It started out at what before——

Ms. RATH. At the start of the blackout, the last day people could trade, it was at $15 and some change——

Chairman LIEBERMAN. Fifteen-forty, I think.

Ms. RATH. At the beginning that they could change——

Senator VOINOVICH. It was what again?

Ms. RATH. Fifteen.

Chairman LIEBERMAN. Fifteen dollars and 40 cents.

Ms. RATH. Fifteen dollars and 40 cents, and then the morning that it opened back up for trading, I believe it was $9.

Chairman LIEBERMAN. I have got $9.98. Was that November 13?

Ms. RATH. Yes.

Chairman LIEBERMAN. And then others say that they did not have it until November 20, when it was $6.99, but $9.98 on November 13. So it lost about a third of its value during the lockout period.

Senator VOINOVICH. Was the fact that the stock was going into the dumpers, was that part of the incentive that you moved along faster than what you originally had planned?

Ms. GRAHAM. I would be speculating. I would address that to Ms. Rath.

Ms. RATH. Yes, definitely was a factor to give people access to their accounts very quickly.

Senator VOINOVICH. Is there any record of any communication at all to this other company about, move it along, we have got a problem? Is there anything in writing in regard to that?

Ms. RATH. We were definitely on the telephone almost every single day and E-mails were going between the three companies to make sure that we had everything——

Senator VOINOVICH. So there is a paper trail, both E-mail and phone calls? You were saying, get on with it?

Ms. RATH. I know that there is probably a paper trail of E-mails.

Senator VOINOVICH. It must have been a very tough period for you and for all of your associates, to see their life savings going down the tubes during that period of time?

Ms. RATH. Yes. As the person responsible for communicating the plan and our efforts to communicate diversification, it was definitely heartbreaking.

Senator VOINOVICH. Thank you.

Chairman LIEBERMAN. Thanks, Senator Voinovich. Senator Durbin.

Senator DURBIN. Thanks, Mr. Chairman.

Ms. Olson, could you go back to the statement you made earlier about your being removed from the Executive Committee? What were the circumstances?

Ms. OLSON. Mr. Skilling and I just did not see eye to eye.

Senator DURBIN. On what?

Ms. OLSON. Management style.

Senator DURBIN. Did it have anything to do with employees' rights and protections at Enron?

Ms. OLSON. I would not go as far as to say that. I would say that he had a different philosophy in how to treat employees than I did.

Senator DURBIN. Could you describe that for us?

Ms. OLSON. I would feel more comfortable if he described that, his philosophy.

Senator DURBIN. Just describe your knowledge of it or your opinion of it. Tell us what led to this difference.

Ms. OLSON. I was an employee advocate. I believed the performance management system, even though it had its good points, it was causing problems within the company. That was his system. But I would really prefer Mr. Skilling talk about that.

Senator DURBIN. How did you differ with him? I mean, what was the difference between you that led to this obviously very serious decision that affected your life, removing you from the Executive Committee?

Ms. OLSON. I am going to say it again. He just did not have the same philosophy about how to treat employees.

Senator DURBIN. Which was what? I mean, what was your philosophy that he did not have?

Ms. OLSON. My philosophy was that employees were very important and employee—we had a lot of employee programs. We talked to employees a lot about how they felt, about morale. We communicated to employees. They were important.

Senator DURBIN. All right. So you were removed from the Executive Committee and sometime shortly thereafter exercised your stock options, is that correct?

Ms. OLSON. Yes.

Senator DURBIN. Can you give us a date when that occurred, roughly?

Ms. OLSON. Late 2000, I was removed from the Executive Committee, and if you look at my statement, I was selling options in December 2000, and January and March, 2001.

Senator DURBIN. OK. Let me try to, if I can, as an outsider, ask you to respond to this. I am really focused on this date of October 25. It just strikes me that this was a critical date for our whole discussion here and I am trying to look at it from your perspective. You have had a difference of opinion with the CEO of your company over how employees are being treated. The difference is so profound that you are removed from the Executive Committee.

You were then meeting with an investment counselor and within a matter of weeks make a significant personal investment decision to exercise stock options. As you said earlier, your investment counselor said you had too much loyalty to a stock here. Think. Stop and think for a minute. So you sold, you exercised your options, sold the stock, put them in a pretty conservative alternative investment. So I would have to conclude from that that you at least had some suspicion that things were not altogether in good shape at Enron.

Then came August and a succession of events. On August 14, what has been described in *Business Week,* the bombshell. Jeffrey Skilling resigns. The CEO and President resigns, citing entirely personal reasons. At that point in time, Enron stock had dropped 50 percent, by the time of his departure, and it continued to drop, as you can see, going down the skids. That had to have felt reverberation throughout Enron at every level, that Mr. Skilling was leaving.

And then comes Sherron Watkins and she said, I think there is something rotten inside Enron. I am not sure, technically and legally, I am not sure, but I think there is something entirely rotten about the way they are keeping the books here, and then the conversation about whether she goes to Mr. Lay and the like.

Put that all in perspective for a minute, if you will, and imagine that an employee, one of the 20,000 employees who has a 401(k) now wants to ask Ms. Olson, in light of all those things, did you not realize that the lockdown, the 18-day lockdown, was really going to disadvantage some people, really put them in a dangerous position? I mean, all of that cumulative evidence would have put me in a spot, taking a look at October 25, saying, stop, we cannot do this. Look at what is happening to our stock. I have just been told by an acquaintance in the company that the accounting practices are rotten. I had no confidence in Mr. Skilling's employee relationship to the point where I exercised my stock options.

So why did someone not blow the whistle? Why did somebody in your department not say, we ought to stop this to protect these employees if we are going to be employee advocates? Why did that not happen?

Ms. OLSON. We looked at that. On the eve of the transition, we looked at it, and from advice from counsel, because of the fact that we would be treating our retirees differently and they may not get the notice, we decided not to do that.

Senator DURBIN. Your employees would have liked to have been treated differently because they lost a third of their stock value during the lockdown period, the 63 percent that was invested in Enron stock. You had to—well, I cannot understand that.

Ms. Rath, can you explain to me why all of this accumulated disaster is happening, and yet on October 25, you still thought it was in the best interest of your employees to lock them out of selling this plummeting stock?

Ms. RATH. I will certainly try. One of the things that we looked at is that we had given employees notification well in advance of this occurring in the hopes that they would make decisions inside their 401(k) knowing these events were occurring. They were also receiving, as we were all receiving, news mid-October, I think is the first time I remember hearing news that there was a potential problem, financial problems at Enron.

When Mr. Skilling left, and I know this is a slight departure, but to help what Ms. Olson said, we were actually excited, quite honestly, as employees. The first employee meeting that we had with Mr. Lay coming back, he received a standing ovation because we were actually glad to see him back in charge of our company that we all had a tremendous loyalty to.

We were making this change originally so that we had the best of service for our participants. We also had an ESOP plan, in addition to our 401(k) plan, that had monthly processing, which meant that an employee wanting to move out of their ESOP shares, and ESOP was granted to employees between 1987 and 1994, they had to request that distribution by the 20th day of the month and then tell us how they wanted it, either in shares or in cash, and then they had no control over it for that period.

Senator DURBIN. I am sorry to interrupt. My time is limited, but there is something that just does not compute. If the change in the trustee and the change in the manager was to provide more service for your employees, you had to understand that the lockdown period meant that they stood the risk of the value of their 401(k) plummeting during that period of time, and at the end of the period of time, they had a great opportunity for more service to sell this discounted stock. How could you think you were doing the employees a favor by locking them out of a market when your stock is plummeting in the name of providing them more service so they could sell their worthless shares afterwards?

Ms. RATH. I think we had difficulty knowing what the stock price was really going to do at the end of the 12 days.

Senator DURBIN. Do you see this chart over here? Is this a trend line? It looks like one to me. I am sure you were hoping things would get better, but I am a liberal arts lawyer so I do not know much about this, but I look at that and say it does not look like a good investment. You must have been aware of the same thing. You must have owned Enron stock during this period.

Ms. RATH. I did own Enron stock, like many other employees. We actually were thinking that under the changes, that we were going to get out of this. We had no idea that the press reports were factual. We were just hearing that there were problems. We truly did believe that—it is easy to sit here now and look back in hindsight, but if someone would have told me we were going to file bankruptcy, I would have never believed it.

Senator DURBIN. I guess this gets to a point that has been made and should, I think, be part of the record here. There has even been a suggestion, and it came from Ms. Olson, that Enron should have been given more opportunity to give investment advice to its employees.

Ms. RATH. I agree.

Senator DURBIN. That is exactly the wrong thing from where I am sitting, because if you have a flawed and fraudulent corporation that is cooking the books, advising its employees about its stock, that does not sound to me like the kind of advice I would offer to anybody and perhaps the laws should be strengthened rather than diminished in that circumstance. I listen to this description about loyalty to the company and it turned out to be blind loyalty at the expense of these employees. That part troubles me greatly.

Mr. Szathmary, there has been a characterization of why Enron made a decision to pull out of Northern Trust, that it did not provide an appropriate level of services. Does your company have any other explanation as to why they wanted to change?

Mr. SZATHMARY. Ms. Olson's comment about some of the service issues are valid. We did have—when I joined NTRC, there were service issues specific to participant calls into our service center. But at the time that they were in the RFP process, our service metrics, or our measures about how we rate our service in the call center had increased tremendously.

The other reason that I am aware of is technology. Enron was a very aggressive company, prided itself on its own technology, their trading desk, and they felt that our trading desk—not trading desk, our technology was not as advanced as Hewitt's was.

Senator DURBIN. Thank you. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Durbin. Senator Carper.

## OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thank you, Mr. Chairman, and to our guests, welcome and thank you for joining us today and for your contributions.

I understand, Mr. Chairman, that we have another panel to follow and that panel will be focusing on some policy recommendations, such as things that we ought to do differently to protect a witness.

Chairman LIEBERMAN. That is correct and I was thinking that when Senator Voinovich was asking some of the his questions. They may have some answers to those questions, yes.

Senator CARPER. I am really tempted to ask each of you to give us one policy recommendation. Think about that. If you were in our shoes, just be thinking about one thing that you would have us do to try to protect the interests and security of others in the future.

While you are thinking about that, let me ask you a separate question. There has been some discussion here of options, that those who were issued stock options were somehow more favorably advantaged as the price of the stock was plummeting and that they were able to exercise their options in a way that gave them an advantage, while those who were locked out in this lockdown period could not.

My understanding with stock options is that usually in a period when stock prices are dropping, those who have the stock options find they are not worth a whole lot and it is not clear to me how people who have stock options are advantaged as the price of a stock is plummeting, as it was here during the course of 2001. Can somebody just give me a little illumination on this point?

Ms. OLSON. Well, I think it depends on what price the option is at. If you have been there for a long time, at Enron for a long time, the option price that you hold might be fairly low. So potentially, the people that were selling options during that time had options that were at a lower price. I guess I would like to say, every employee at Enron had stock options that they could be exercising.

Senator CARPER. And some of those options were as low as a couple of dollars from early on?

Ms. OLSON. I do not know of any that were $2.

Senator CARPER. Alright. Does anybody else have a thought on this?

Ms. RATH. I can help you a little bit in that stock options are non-qualified so they do not fall under the qualification and all the rules and regulations of ERISA. Ms. Olson is absolutely accurate.

In 1994, we had an all-employee stock option program, and each year, employees received as they came on board stock options with the strike price at the end of each calendar year. So in some years, the first year that started, the stock price was $30. When the stock price split, those options' strike price would have been $15 and those options would have doubled. So as that program ran on, it was replaced by a new option program, and unfortunately for all Enron employees, the strike price was $83 and those are basically worthless at this point.

But stock options are non-qualified compensation programs and they truly are not subject to all of the same rights and features that 401(k) and pension plans are subject to.

Senator CARPER. Thank you.

Mr. SZATHMARY. Senator, our role was limited to the 401(k) and the ESOP plan. We were not involved with the stock option plan.

Senator CARPER. Ms. Graham, any comment?

Ms. GRAHAM. I have no expertise on stock options so I am afraid I cannot be helpful.

Senator CARPER. Alright, fair enough. The other question I have of you all, and this is a question I will ask the third panel, as well, is the following: If you were in our shoes and looking at what has happened, and how people have been hurt financially, what should we do differently?

Ms. OLSON. At the risk of being disrespectful, I really do believe at Enron, particularly at Enron, if we were allowed to provide as a company more education for our employees and the advice of financial advisors, I believe that would have helped in the Enron situation. So if you could change that particular law and allow employers to offer that, particularly at Enron, that would have helped.

Senator CARPER. Alright, thank you. Ms. Rath.

Ms. RATH. It is a difficult place that I believe you are sitting in because I have heard limits of what you can invest and percentages and I certainly have a personal bias that I would not like to see that freedom removed from the rights of participants. But it is a difficult thing to communicate diversity and it is still another thing to actually force someone's hand.

We were looking at rolling out the investment advice as we have seen the ERISA laws start to get more lenient, whereas before we were forbidden as corporate employees to give investment advice, and as it was stated earlier, who would have taken investment advice from us at this last few months? But there should be third party vendors who have nothing to gain except maybe a small fee to offer that investment advice.

One of the things we struggled with over the years of Enron is with our ESOP. Our employees were given 20 percent access to those shares every year beginning in 1996, and I felt personally and the benefits department felt like——

Senator CARPER. When you say 20 percent access, what does that mean?

Ms. RATH. For the years that they were awarded ESOP shares, which could amount to as much as 10 percent of their salaries for the 7 or 8 years that we had our ESOP plan, they were given access to take those shares from that ESOP plan if they chose to diversify. In communication to those employees, we told them that— we urged them to seek investment advice through a financial planner before they accessed retirement fund accounts, basically.

But we could watch each investment house after our employees because they wanted our employees to move those funds to their investment companies, Dean Witter, Smith Barney, all of them, because those companies stand to make money off of the investments of our people. And while they are all legitimate companies, we feel an obligation to protect people as they get up in age just in case there is a snake oil salesman in the group.

So to have an unbiased third party vendor, and we had to. We were actually going to roll out one December 3 and we filed for bankruptcy.

Senator CARPER. Alright, thank you. Mr. Szathmary.

Mr. SZATHMARY. Senator, I would prefer not to make any policy statements on behalf of——

Senator CARPER. Ms. Graham, would you care to make any policy statements?

Ms. GRAHAM. I would like to say I have that expertise to do so but I do not. I know that the Committee has a hard task in front of them in doing this and I am sure that any help that Hewitt can provide in structuring that, we would be happy to do, but I cannot sit here today and propose anything.

Senator CARPER. Well, that is the job of the next panel. You have done your job and we appreciate that very much.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Carper. Senator Voinovich has one question and then I have a couple.

Senator VOINOVICH. You are first.

Chairman LIEBERMAN. No, go ahead.

Senator VOINOVICH. You are the Chairman. I am looking at that chart[1] and a lot of people had to be believing that things were not going very well. They opened up at 9:24 on November 12. Does anybody know, was there an avalanche of sale of stock on that date?

Ms. RATH. I have had reports—I will defer to Hewitt to provide that information. I have heard reports that no would be the answer to that question, but I do not know about it——

Senator VOINOVICH. The next question I would like is, were there a lot of people who bought Enron stock in their 401(k)'s after the blackout period was opened up.

Ms. GRAHAM. I do not have the specific numbers with me. Obviously, when we did go live, a lot of people called in and transferred out of Enron stock and continued to do so after our systems were up, but I do not have the information with me who bought in and who bought out.

Senator VOINOVICH. I would be interested in that. As I look at what was going on here, a lot of employees probably stuck around in hopes that things would get better and their stock would improve. They did not believe the media.

But I just think that, again, it gets back to the credibility of the leaders of the company and how dishonest they were in terms of the information that was getting out to the people. That was despicable.

They could have gotten out earlier, because they saw that happening, but they stuck around because they hoped that maybe they would recoup what they lost. Would you agree with that, Ms. Rath?

Ms. RATH. I would agree with that, and I can tell you, Senator, that we know as of right now, the last payroll feed that we sent to Hewitt, we had approximately 1,400 people buying Enron stock and I believe the price was 39 cents. So we do have, out of the active employees that are left, 1,400 people that are still buying.

Senator VOINOVICH. Thank you.

Chairman LIEBERMAN. The whole experience here, including this morning, is an incredible story of the loyalty of the employees to the company, which, it pains me to say, was not returned, as we have seen by what has happened.

I must say, Ms. Olson, I appreciate what you said and it is a good suggestion, that you wish, looking back at it, that the company, the Administrative Committee would have had the opportunity to give to the employees some of the same advice that you got during 2001 that led you to sell, which is that you should diversify, not even knowing at that point, by your testimony, that there was anything wrong with the company. It is just not a smart thing to stay in a company to that extent.

I must say that—and that your hands were tied in advising the company, and I have no doubt except that is your truthful statement of what you felt you could do. The infuriating fact is that the company, outside of your office, your division, was giving advice to the employees, in people like Mr. Skilling and Mr. Lay, who were constantly telling the employees to buy more Enron stock. Mr. Skilling resigned on August 14. Mr. Lay sends an E-mail to all em-

[1] The chart entitled "Enron Stock Price/Share; 2001" appears in the Appendix on page 174.

ployees saying, restoring a significant amount of the stock value we have lost is one of its top priorities. Our performance has never been stronger. Our growth has never been more uncertain.

On September 26, Mr. Lay says at a meeting with employees, Enron stock is a bargain. He said he strongly encouraged Enron officers to buy stock, although we now know that they were selling it, to their great benefit, as he has himself done so over the past couple of months. Our financial liquidity has never been stronger. The third quarter looks great.

In the fall edition of the company newsletter, *Enron Business,* an entire article called "Ken, Greg, and Mark Take on the Stock Price," and that is Greg Whaley, President, Mark Freeburg, Vice Chairman, assures employees that the company has a strategy to get the stock price back up and it will happen.

I do not really have a question to ask you about it. Do you not agree, I guess, that though you were not able to do it, the company really was giving the employees advice, and it was bad advice, which was to keep buying?

Ms. OLSON. I think some employees would interpret that that way.

Chairman LIEBERMAN. Yes. I think anybody would have interpreted it that way.

Let me go back to something said earlier which was interesting and I had not understood it before. As you know, we had some testimony earlier about exactly when the employees' ability to trade stock started, but let us take the date on which you have testified to, which was October 26. You said earlier today that on October 25, there was some consideration of postponing the lock-in period, and Mr. Szathmary said the same, that he had been contacted that day to ask what was plausible, and just to go back to it, you indicated—why do you not just repeat that again.

Mr. SZATHMARY. Ms. Rath and I had a discussion and we talked about extending the suspension period and a January 1 date was proposed. At that point in time, we, meaning NTRC, I proposed a date later on, which was March 31, 2002.

Chairman LIEBERMAN. So Ms. Rath mentioned the possibility of January 1 and you said later?

Mr. SZATHMARY. Right, and that was due to the fact that at year end, traditionally for recordkeepers, you have got a year-end processing to do. You are closing your books. You are doing IRS-regulated testing. You are mailing out tax forms, those types of things.

Chairman LIEBERMAN. OK. And then later in the day, you were called back and said, forget about it. We are going ahead tomorrow with the lockdown.

Mr. SZATHMARY. That is correct.

Chairman LIEBERMAN. So, Ms. Rath, what led to the call that you made to Mr. Szathmary?

Ms. RATH. We were concerned in the benefits department about, obviously, the deterioration in the stock price. We were also concerned because we had fielded a question that was going to be proposed in an all-employee meeting where an employee had written a question to be asked to Mr. Lay, now that I have lost all of my retirement, what do I do? I have been here 20 years.

Chairman LIEBERMAN. Right.

Ms. RATH. Our process, and we have a "take it to the top"——

Chairman LIEBERMAN. Had that been asked already or it was going to be asked?

Ms. RATH. It was a question that had been submitted in advance——

Chairman LIEBERMAN. And the meeting was going to be—do you remember?

Ms. RATH. I believe the meeting—October 22 is the date that comes to mind.

Chairman LIEBERMAN. But after the lockdown period began?

Ms. RATH. That week that we were——

Chairman LIEBERMAN. OK.

Ms. RATH. That Friday that we were getting ready to start——

Chairman LIEBERMAN. Had you received other complaints from employees or requests that the lockdown be postponed?

Ms. RATH. I personally had received one other request that told me my timing was horrible, which I tended to agree with, but we had had this in progress for many months.

Chairman LIEBERMAN. Right. And again, just for the record, the original decision to change had nothing to do with concerns about the viability of the company, it was what was testified to earlier?

Ms. RATH. Absolutely correct. It had.

Chairman LIEBERMAN. OK. So you had at least those two requests. Who did you consult with?

Ms. RATH. I consulted with the Senior Director of Benefits. Her name is Cynthia Barrow. She is the former Senior Director of Benefits, who was my direct supervisor.

Chairman LIEBERMAN. And did you talk to anyone else about that?

Ms. RATH. No, not at the time.

Chairman LIEBERMAN. Ms. Olson, were you involved in those discussions at all?

Ms. OLSON. Yes, I was. After they discussed it, Cynthia Barrow came and got me and we discussed it, as well.

Chairman LIEBERMAN. Did you then take it up higher than yourself?

Ms. OLSON. No, I did not. I actually went and asked a couple other HR VPs that did not report to me at the time——

Chairman LIEBERMAN. Human resources vice presidents?

Ms. OLSON. Right, what they thought, laid out the pros and cons, and they said it sounds like we need to go forward with it. I also asked an employee, another employee, and they said the same thing.

Chairman LIEBERMAN. So let me make it clear. The consultations you had with, is it Ms. Barrow?

Ms. OLSON. Right.

Chairman LIEBERMAN. And then the consultations she had with you were after the initial call you made to Northern Trust to find——

Ms. RATH. Yes, sir.

Chairman LIEBERMAN. OK. And then you reported to them that it could be delayed either to January or March, but preferably March?

Ms. RATH. Yes.

Chairman LIEBERMAN. Why do you not go on, Ms. Olson. You did not talk to anybody but the other human resources vice presidents? Just answer for the record, if you could say yes or no.

Ms. OLSON. Yes.

Chairman LIEBERMAN. OK. You did not talk to anybody. Did you talk to the Administrative Committee, other Members of the Committee?

Ms. OLSON. No, I did not.

Chairman LIEBERMAN. So just to be clear, the judgment, then, that you were getting from the other human resources vice presidents was that it was not practical to postpone the lockdown?

Ms. OLSON. And our ERISA counsel.

Chairman LIEBERMAN. And who is that?

Ms. OLSON. Our ERISA counsel?

Chairman LIEBERMAN. Yes.

Ms. OLSON. Pat Mackin.

Chairman LIEBERMAN. Who you referred to earlier. An independent counsel or part of Vinson and Elkins that we have heard referred to?

Ms. OLSON. Independent

Chairman LIEBERMAN. In Houston?

Ms. OLSON. No, I think he actually was in Seattle.

Chairman LIEBERMAN. OK. So you called him, and just tell us a little bit about his advice.

Ms. OLSON. His advice was that because we had already communicated and it was out there, everybody had the notice well in advance, that if we were going to postpone the transition period, that the retirees and the people that were outside of the Enron building, which there were about 11,000 of those people, and because the mail was so slow because of the anthrax scare that was currently happening in the country, he said that he did not feel like we could get the notice to those employees in time for them to know that they could, in fact, sell stock or trade in their 401(k). So he felt like we would be treating participants in the plan differently and he advised us to go forward with the decision to transition.

Chairman LIEBERMAN. And then that led to your talking to Ms. Rath, who then called Mr. Szathmary back and said, go ahead with it tomorrow?

Ms. OLSON. Yes.

Chairman LIEBERMAN. Obviously, the concerns as you understood them that the two complainants, employees, had were that the stock was crashing and they wanted the ability to sell during that period of time?

Ms. RATH. Yes, that was my understanding.

Chairman LIEBERMAN. Tell me about why, in light of that, the folks at Northern, or then at Hewitt, I guess, both were able to do the—did you urge them then to do the lockdown in a shorter period of time?

Ms. RATH. Yes. They might not refer to it as urging, but yes, I did.

Chairman LIEBERMAN. Am I right that they sent E-mails to the employees as part of that?

Ms. RATH. That was our normal course of processing. If we had a big day coming up, whether it was for our annual open enrollment for elections for health care, prior to a day that was going to——

Chairman LIEBERMAN. You can see where I am going. If you did not postpone the lockdown until the next year because you were concerned that some of the employees would get E-mail and some mail, then why had you been doing these other notifications to employees just as an E-mail and not worried about the inconsistency?

Ms. RATH. Part of the E-mails that we were sending only had to do with active employees. For example, active employees can only take a loan. It is only active employees.

Chairman LIEBERMAN. OK. A few more questions before I let you go. One thing that comes out at me, Ms. Olson, is the role of the Administrative Committee here, an important role but limited, as you describe it. As you testified earlier, in order to have had the independence—well, to put it another way, the only people who could have put you in a position where you could have sold the Enron stock that was in the 401(k)'s, which you did yourself and others were doing during 2001, was if the 401(k) plan design had been changed, correct?

Ms. OLSON. That is correct.

Chairman LIEBERMAN. And who, again, could have done that, the Board of Directors?

Ms. OLSON. The ultimate decision is with the Board of Directors.

Chairman LIEBERMAN. And again, you never asked them to do that?

Ms. OLSON. No, we did not.

Chairman LIEBERMAN. And, of course, nor did they initiate it, even though a lot of them, certainly the executives, were selling the stock during that period of time. The Administrative Committee of the plan is composed totally of people within Enron?

Ms. OLSON. Yes, that is true.

Chairman LIEBERMAN. It seems to me that is something we should be thinking about as we think about reforms here, because there is an inherent conflict of interest at some point. This is the classic case. The stock of the company is going down. The executives are continuing to promote the company, not wanting to acknowledge serious problems. The last thing people in the company would want to have happen is that the company's own 401(k) plan sells its stock. On the other hand, that would have been the best thing to do for the employees.

Ms. OLSON. I think your suggestion is a valid one.

Chairman LIEBERMAN. We will take a look at that as we go forward. I have a few more questions.

I am interested, Mr. Szathmary and Ms. Graham, whether—I gather you run a call center for the employees who have questions about their 401(k)'s, is that right?

Mr. SZATHMARY. That is correct.

Chairman LIEBERMAN. Did you get any calls either prior to or during the lockdown of complaints from employees about the lockdown?

Mr. SZATHMARY. To the best of my knowledge, no, Mr. Chairman.

Chairman LIEBERMAN. How about you?

Ms. GRAHAM. I do not have any knowledge of any specific complaint. We did set up a "hotline" for Enron from November 1 through the live date so that——

Chairman LIEBERMAN. Right.

Ms. GRAHAM. Traditionally, in a blackout period, Northern Trust would put a message on their interactive voice response system, that's the telephone system that you can call into to make a transaction, letting participants know that the plan was under transition, and the incoming recordkeeper would do the same. Enron wanted a live body, if you will, to be able to field those calls, so Hewitt did set up a hotline, letting Enron know that the information we would be able to give was limited because we had not received the plan information from Northern Trust yet. We did not receive that until November 7.

So I know that we took some calls and I know we had some questions about the blackout, but I am not aware of any complaints, per se.

Chairman LIEBERMAN. OK. This is for Ms. Olson and Ms. Rath. A former Enron benefits accountant named Robin Josea—a familiar name—alleged last night, I do not know if you saw it, in a report on CBS Evening News that she noticed frequent payments being made from employee benefit accounts to outside consultants. She said that when suspicions prompted her to raise the issue with her superiors, she was told that the money was going to friends of executives and not to inquire any further. Do you have any knowledge of what Ms. Josea was talking about?

Ms. OLSON. I became aware of this this morning, and before that, no.

Chairman LIEBERMAN. So no knowledge at all?

Ms. OLSON. No.

Chairman LIEBERMAN. All right. We will add that to the information we will be requesting by additional subpoenas of the company.

Finally, a different issue but similar tone to it. There have been complaints by employees of problems with one or more of Enron's deferred compensation plans under which a portion of certain employees' earnings were set aside for distribution at a later date. Participants have complained that prior to the bankruptcy, top executives were allowed to withdraw funds from the plan while other employees had their funds frozen and could not receive withdrawals to which they were entitled. This is deferred compensation. Were you aware of this happening at any time and did you try to do anything about it?

Ms. OLSON. That is not in my area. That is in the compensation area and I am not responsible for that.

Chairman LIEBERMAN. You have no knowledge of any of the details relating to that?

Ms. OLSON. It would be secondhand.

Chairman LIEBERMAN. All right. There, too, just as in the case of the severance benefits, now that the company has gone into bankruptcy, the employees who had funds in the deferred compensation fund, as I gather, are just in line with scores of other creditors, trying to recover what was rightfully theirs. So it adds, again, insult to injury.

The Committee is going to prepare additional subpoenas based on some of the information we heard today, particularly with regard to the retention bonuses coming just 2 days before the bankruptcy and the problems that the employees are having securing their own severance.

But in the meantime, I thank all of you for coming. I do want to point out, Ms. Olson and Ms. Rath, that you came voluntarily. There has been some experience around the Hill in the last few days of current or former Enron executives not coming voluntarily, so we appreciate it. Your testimony has added to our understanding of what happened here, and I must say to our intense desire to do whatever we can to make sure that nothing like this ever happens again. Thank you. Thank you very much.

We will go to the third panel now. The third panel is Karen W. Ferguson, Director of the Pension Rights Center; James A. Klein, President of the American Benefits Council; Erik D. Olsen, a member of the Board of Directors of the American Association of Retired Persons; Stephen M. Saxon, Society of Professional Administrators and Recordkeepers; and Susan J. Stabile, Professor at the St. John's University School of Law.

If the witnesses can work their way to the table, before you sit, just get ready to raise your right hands.

Would you please raise your right hands. Do you swear that the testimony you are going to give the Committee today is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. FERGUSON. I do.

Mr. KLEIN. I do.

Mr. OLSEN. I do.

Mr. SAXON. I do.

Ms. STABILE. I do.

Chairman LIEBERMAN. Thank you. Please be seated. Again, the record will show that the witnesses all answered the question in the affirmative.

It has been a very important, to me, interesting morning of testimony. It is a fact situation where you continue to learn more and more and our temperature, I think, continues to rise here about what happened. As you know, the concerns of people around the country, 42 million plus in 401(k)'s, also continue to rise and the question is what we can do about it.

I must say, I feel increasingly that we should act here sooner rather than later. The normal course of events on the Hill tends to be to do the investigation and then make recommendations. This investigation is going to go, because it is so fact-intensive and complicated and because of the various committees that are doing it, quite a long time, several months, I would guess. There is a real clear and present danger as reflected in the market fluctuations in the last week and a half.

So you are a particularly important panel to help guide us so that we try to close the loopholes, if you will, but not overreact to a point where we are going to do damage to the opportunity of a lot of workers in this country to build a nest egg for retirement.

With that invocation, Ms. Ferguson, thanks for being here.

## TESTIMONY OF KAREN W. FERGUSON,[1] DIRECTOR, PENSION RIGHTS CENTER

Ms. FERGUSON. Thank you, Mr. Chairman. I am Karen Ferguson, Director of the Pension Rights Center, a consumer organization dedicated to protecting and promoting the pension rights of employees, retirees, and their families. With me is Karen Friedman, the Center's Director of Policy Strategies, and we thank you for inviting us to testify on what the Federal Government can do to make retirement plans more secure.

Over the past 25 years, the Pension Rights Center has worked to end inequities in retirement income programs. We are here today to suggest reform measures that will ensure both that Enron-type situations cannot occur again and that the individuals harmed in these situations will be made whole.

The story of Enron is unfolding daily. What has come clear is that company officials concocted a variety of elaborate schemes to enrich themselves and hide losses in order to mislead employees and investors into believing the company was highly profitable. Millions of stockholders were misled and lost large amounts of money, but no one has lost more than the Enron employees, as we heard today. They lost both their jobs and their 401(k) money.

In the aftermath of the Enron tragedy, the Pension Rights Center has been inundated with calls and letters from reporters, policy makers, and ordinary citizens who ask us, is retirement money safe? What can be done to prevent future Enrons?

What is clear to us is that strong measures are needed to restore confidence in private retirement plans. Just as Studebaker's bankruptcy in the 1960's prompted Congress to pass ERISA in 1974, Enron's failure should be the catalyst for closing the many serious gaps in the law that this troubling tragedy has highlighted.

There are a number of things that can be done to ensure that future Enron-type situations do not happen again. First and foremost, there should be strong measures to ensure proper diversification of investments within 401(k) plans. If an employer makes matching contributions in the form of its own company stock, employees should be able to move out of that stock and into other 401(k) investments within a reasonable period of time. Legislation introduced by Senators Boxer and Corzine and President Bush's proposal address this by allowing employees to shift out of the company matching stock contributions after they are vested, usually after 3 years.

These are important first step measures, but Congress must make sure that companies cannot circumvent these provisions by simply setting up what are known as KSOPs, which combine 401(k) plans and plans funded primarily by company stock, ESOPs (employee stock ownership plans).

Business groups are taking the position that if employees are allowed to freely shift out of company matching stock and into other plan investments, employers will stop matching their employees' contributions. This is very unlikely, since, as we point out in our written statement, there are a variety of tax and other incentives to encourage employers to make matching contributions.

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[1] The prepared statement of Ms. Ferguson appears in the Appendix on page 124.

But to assure adequate diversification, much more is needed. First, probably the simplest approach would be to apply the same ten percent limitation on company stock that is now imposed on traditional defined benefit pension plans.

Chairman LIEBERMAN. In the defined benefit pension plans, is the ten percent limit just on company stock or on any one stock holding?

Ms. FERGUSON. It is ten percent of company stock or real estate.

Chairman LIEBERMAN. OK. What about company A that wants to buy 25 percent of company B's stock and put it in its pension fund?

Ms. FERGUSON. That goes under the prudence and diversification rules that you mentioned earlier in the hearing. It would be imprudent to invest too heavily in a single stock.

Chairman LIEBERMAN. But there is no percentage limit?

Ms. FERGUSON. No. The percentage limit is solely for company stock and real estate.

Chairman LIEBERMAN. Right.

Ms. FERGUSON. Our point is a simple one. If diversification, a 10 percent limit is required where employers and the government bear the risk of loss, why should less diversification be required when employees bear the risk?

The Boxer-Corzine bill would allow a little bit more leeway and allow employees to put up to 20 percent of their 401(k) money in company stock. There is another approach, which would be to say that if the employers make matching contributions in employer stock, then they cannot offer company stock as one of the options for the employees' own contributions. And, conversely, if they do not offer company stock as the match, if they offer cash, then employees would be able to invest their contributions in company stock.

We have heard the argument that such limits are restrictions on, quote, "personal choice," but they are not. Individuals are free to invest their personal money any way they wish. The restrictions would only apply to plans that are subsidized by taxpayers. The tax breaks for 401(k)'s and pension plans will cost the American taxpayers $90 billion this year. These plans are subsidized for only one purpose, to help provide a secure retirement for American workers. There is simply no justification for all taxpayers to pay higher taxes to subsidize unacceptably high-risk investment portfolios.

In our written statement, we suggest other measures that could help prevent future Enron-type situations. These range from requiring the appointment of independent fiduciaries, when a plan holds company stock, to providing a bounty to encourage employees to bring information about questionable activities to the attention of the government.

In addition to making basic structural changes to prevent future Enrons, it is important that Congress act to make sure that employees who are harmed in such situations are made whole for their losses. This means addressing a number of serious shortcomings in the law.

If the people who ran the Enron 401(k), in fact, knew that the stock was plummeting while they were encouraging employees to load up on that stock, a court is very likely to find that they have violated their legal obligations to act solely in the interest of the participants and to hold them personally liable to pay the money back into the plan. But there is no assurance that the money will be there, that the people running the plan will have efficant assets to pay the money back. There is no requirement that they be insured.

In Enron's case, fortunately, there is a "fiduciary insurance policy," but it is estimated to be only about $85 million, whereas the Enron employees are estimated to have lost almost $1.3 billion, more than ten times the amount of the policy. An urgently needed reform measure is a requirement that all plan fiduciaries be fully insured.

Another important measure, although one which falls outside of the pension laws, is to provide that employees with fraud claims under a 401(k) plan get the same priority treatment in bankruptcy court as secured creditors.

There are a number of other areas which we discuss in our prepared statement, particularly where the law should be clarified to avoid confusion. I will just mention one. There is an urgent need to clarify that company officials who make misleading statements to employees can be sued even if the employees claim they had nothing to do with the direct running of the plan, that technically they were not fiduciaries.

Business groups claim that adopting reform measures will lead to over-regulation of 401(k) plans and discourage companies from offering them. They point to the decline in the number of traditional pension plans. The reality is, employers have moved away from traditional plans simply because other cheaper alternatives have become available. These include 401(k)'s and ESOPs and so-called non-qualified plans that cover executives.

As the Enron investigations continue, it is increasingly apparent that the problem here is under-regulation, not over-regulation. We must have protections if individuals are not to lose confidence in 401(k)'s and other retirement plans.

I realize my time has run out. In our prepared statement, we reference other policy issues and recommendations. I would like to just quickly mention one, which is highlighted by this situation. The Enron employees have nowhere to go in the Executive Branch of the government to express their policy concerns. There is no advocate for participants, as there is in other areas of the law, to speak on their behalf, to develop proposals, to hear from them. Now, 28 years after the enactment of the private pension law, we think it is time and we hope that you will consider addressing this issue.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you very much. That is very helpful testimony.

Mr. Klein, welcome. Thanks for being here.

## TESTIMONY OF JAMES A. KLEIN,[1] PRESIDENT, AMERICAN BENEFITS COUNCIL

Mr. KLEIN. Thank you, Mr. Chairman and Senator Carper. Since Ms. Ferguson has done such a splendid job of explaining the views of the business community, I should be able to finish my remarks within the 5 minutes without a problem, I think. [Laughter.]

I want to thank you, though, genuinely, for the opportunity to appear before the Committee today. The American Benefits Council represents Fortune 500 companies and other organizations that assist employers of all sizes in providing health and retirement benefits.

One cannot help but listen to the compelling testimony from the earlier panel of Enron employees this morning without feeling a deep sense of outrage and determination to take steps that will prevent such a situation from occurring in the future. At the same time, I think one cannot examine the realities of the 401(k) system overall without concluding that hasty or ill-advised legislative changes could unintentionally harm the very people that Congress hopes to protect, and I know that you do not want that to happen. I feel your sense of urgency, Mr. Chairman, but it is also, I think, my responsibility today to just offer a word of caution, of issues to consider.

Fifty-six million Americans have amassed $2.5 trillion of retirement savings in 401(k), profit sharing, and employee stock ownership plans. These plans not only prepare workers for retirement, of course, they also democratize corporate ownership and they also provide one of our Nation's most significant sources of investment capital. Congress has, over many decades and on a bipartisan basis, promoted these plans.

The American Benefits Council believes that before any legislation is enacted, Congress should ask and satisfactorily answer several important questions to ensure that Congress's good intentions do not inadvertently undermine the successful employer-sponsored retirement system. Let me pose just five of these many questions that I believe you should consider. I will certainly do my best in the Q and A period to answer them, and to the extent that there are no easy answers, in the weeks to come, we will do our best to provide further information.

The five questions are, No. 1, if legislation is enacted to impose specific caps on the percentage of a 401(k) plan that may be comprised of company stock, or if legislation restricts plans from requiring that a company stock be held for a specific period of time, will employers be compelled to reduce or eliminate their voluntary matching contributions to the 401(k) plan?

No. 2, is there a positive correlation between the presence of company stock in a 401(k) plan and the financial success of the sponsoring employer?

No. 3, if legislation induces employers to divert company stock from 401(k) plans to broad-based stock option programs where the company can require employees to hold the stock for a prescribed period, might that actually have negative implications for retirement security?

[1] The prepared statement of Mr. Klein appears in the Appendix on page 131.

No. 4, almost all workers whose companies make 401(k) matching contributions in company stock are also covered by more traditional pension plans whose benefits are guaranteed by the Federal Government. Yet, most U.S. workers and retirees are not covered by such traditional pension plans. Therefore, it is important to ask whether workers whose 401(k) plans are substantially invested in company stock are really the workers whose retirement income security is the least protected and diversified.

And No. 5, if Congress imposes complex restrictions on transaction suspension periods, the so-called lockdown periods that were the topic of the earlier panel, or if new legislation increases employer fiduciary liability during these periods, will this discourage employers from making positive changes to 401(k) plans, such as offering additional or improved investment choices?

These are a few of the many difficult questions that Congress must seriously consider before acting.

As disturbing as the consequences of Enron's collapse have been for many workers and retirees, we see at least three positive developments that could emerge from this Congressional review. First, more must be done to educate people about the importance of investment diversification. To this end, we support proposals by the Bush Administration and bipartisan proposals in Congress to provide advance notice to employees of lockdown periods, as well as more regular retirement plan benefit statements.

Second, we hope that Congress will support proposals to help employees receive professional investment advice and help employees save for the cost of retirement planning services on a tax-favored basis. The issue is not one of employers providing the advice, as I think was the question of Senator Durbin earlier. It is for employers to be able to help facilitate employees receiving advice from outside investment advisors.

And third, we hope that the concern expressed for 401(k) participants will also renew Congressional interest in traditional defined benefit pension plans. These plans, which are funded by the employer and insured by the Federal Government, can be a very effective complement to a 401(k) program for many workers. Yet the number of these plans has declined dramatically, from a high of 175,000 plans nationwide in 1983 to fewer than 50,000 today. And I must categorically reject Ms. Ferguson's characterization of the reasons why employers find themselves having to move away from the defined benefit system. And in support of my position, I would point out again that most large companies, including Enron, in fact, sponsor both defined benefit plans and defined contribution plans.

Finally, these sobering numbers about the decline of traditional pensions, I think, offer two important lessons. First, Congress must approach any new regulation of 401(k) plans with extreme caution in order to avoid the same disastrous decline in employer sponsorship of 401(k) plans. And second, Congress should address some of the real challenges faced by defined benefit pensions so that more companies can provide these valuable plans to their workers.

In closing, I would underscore our belief that information and advice are the strategies that will protect workers and retirees while fostering the continued growth of the private employer-sponsored retirement system.

Thank you again, Mr. Chairman, for the opportunity to appear here today.

Chairman LIEBERMAN. Thank you, Mr. Klein. You used a higher number than we have been using about the number of people in 401(k)'s.

Mr. KLEIN. Yes.

Chairman LIEBERMAN. Tell me briefly about that and then give me the comparable number for workers in defined benefit pension plans.

Mr. KLEIN. The number of participants in 401(k) plans is 42 million. I actually lumped different plans together. I said 56 million in 401(k), profit sharing, and employee stock ownership plans.

Chairman LIEBERMAN. Oh, and ESOPs. OK. How about in the defined benefit pension plans? Do you know what that number is now?

Mr. KLEIN. Also a little bit less than 42 million active employees in defined benefit plans.

Chairman LIEBERMAN. Interesting. Obviously, the real growth has been over the last couple of decades in the 401(k)'s.

Mr. KLEIN. Absolutely.

Chairman LIEBERMAN. Thanks very much.

Erik Olsen is a member of the Board of Directors of AARP. I am looking around the room. There is at least one fellow member. There are others, I would guess. It is nice to see you here.

### TESTIMONY OF ERIK D. OLSEN,[1] MEMBER, BOARD OF DIRECTORS, AARP

Mr. OLSEN. Thank you, Mr. Chairman. You are one of our 35 million members. We are glad to have you here. Senator Carper. My name is Erik Olsen and I am a member of the Board of Directors of AARP. We appreciate this opportunity to present our recommendations for policy changes that should be enacted to protect the retirement savings of American workers and retirees.

The financial collapse of Enron illustrates weaknesses in our pension laws. Many of ERISA's, and I am struck that as I started my career, we did not have that law. We should remember what that first initial is for, Employee, Employee retirement security. ERISA's extensive protections simply do not extend to new 401(k)-type plans and must be updated.

We should begin with the systemic problem of employer stock. While the single most important rule for investing is diversification, the asset of Enron's 401(k) plan, as well as hundreds of other companies today, are overly concentrated in employer stock. Our testimony today will focus on several areas that call for immediate action: Disclosure, risk and diversification, investment advice, and remedies under the law.

First, the shift of risk and responsibility to employees makes it imperative that employees receive complete, accurate, and timely information. This should include benefit statements at least quarterly that entail the status of participants' investments and invest-

[1] The prepared statement of Mr. Olsen appears in the Appendix on page 135.

ment activity and urge diversification. A plan should also supply ample notice of any temporary plan lockdown.

Diversification is the most basic principle of sound investment practice. Few financial advisors would recommend investing more than a limited percentage in a single stock. This is especially true when that stock also is a source of one's wages. But when it comes to employer stock, the 401(k) system fails that test. Surveys indicate that about one-third of all funds are concentrated in company stock.

Current barriers to prudent diversification should be removed, including the ability of plans to compel employees to invest in an employer's stock, and plan restrictions on shifting to other investments until a certain age, such as 55 years old.

While rights to diversity are essential, they are not sufficient. Our pension system and corporate culture have tax incentives, conflicts and behavioral tendencies that have stacked the deck in favor of heavy investment in employer stock. This is true even when employees are free to choose.

Employers also have their own financial reasons to encourage such investment. While individuals are free to invest personal funds in any way, the law should provide that tax subsidized retirement plans be invested in a diversified manner. Any changes should avoid disincentives for employer contributions while also addressing the combination of employer-provided stock and employee purchases of company stock that create such high concentrations.

One option we want to suggest that you look at is to provide the employer with a choice. The employer can continue to make contributions in stock or the employer can include stock as an investment option for employees. Under this approach, employers without limit can either contribute company stock or permit employees to purchase stock as an investment option, but not both, a balanced approach.

Unfortunately, we also know that too many Americans lack financial investment knowledge. For example, we did a recent survey that found that just over one-third of our members could correctly answer whether diversification reduces risk. Many participants simply want to be told where to invest. We agree that individual advice can be helpful, but such advice must be protected from financial conflicts of interest. And we understand that Senator Collins has a bill that does just that.

Receiving independent, unbiased advice, as the Enron saga has demonstrated, is critical. We should not, as some have recommended, carve out an exemption to ERISA's basic prohibitions on conflicted advice.

Another glaring problem is the inability of employees to properly enforce their pension rights. As part of any pension reform, it is therefore essential that we enable employees to recover losses due to fraud and other violations. Employees must have tools to protect their own retirement funds.

In conclusion, we urge Congress this year to enact changes to better protect workers' pensions. The President has called for action and we agree. We should act now to improve disclosure, improve diversification, and improve remedies for those who are harmed. While the President has offered a number of useful steps, many of which we support, we must go further to address the fundamental problem of high concentration of employer stock in some plans. Only with more comprehensive changes can we ensure greater retirement security for workers in today's pension environment. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Mr. Olsen, some very interesting ideas.

Next is Stephen Saxon, representing the Society of Professional Administrators and Recordkeepers.

**TESTIMONY OF STEPHEN M. SAXON,[1] ON BEHALF OF THE SPARK INSTITUTE (SOCIETY OF PROFESSIONAL ADMINISTRATORS AND RECORDKEEPERS)**

Mr. SAXON. Good afternoon. My name is Steve Saxon, I am an attorney with Groom Law Group here in Washington, DC. And I am testifying today on behalf of the SPARK Institute. SPARK is the Society of Professional Administrators and Recordkeepers. It is a group of about 250 financial institutions that work in the retirement services area.

After hearing the testimony this morning, I really want to just cover two or three legal points and two or three policy issues. The major legal point that I see is this, one of them is this, and that is a fundamental goal of ERISA is to provide retirement benefits security for American workers. The statute also provides, a fundamental goal of enhancing employee ownership in American companies. Frequently, those two goals can be achieved in a co-extensive manner. Sometimes they cannot.

In trying to achieve these goals, tension can arise under ERISA where a plan fiduciary, in adhering to the terms of the plan, and these plans are designed for the purpose of holding employer securities. So on the one hand, the fiduciary is subject to the rules under 404(a)(1)(D) which say you must follow the terms of the plan. The plan says that you must hold employer securities.

At the same time, a conflict could arise because that same fiduciary is subject to ERISA's prudence requirements which could dictate, all things being equal, that you should sell that security.

The courts have tried to deal with that tension by creating a presumption, a presumption under the law, that says that in the case of a plan that is designed for the purpose of holding employer securities, the continued holding of employer securities will be deemed to be prudent as long as it is not an abuse of discretion. This is an issue that has been debated before the courts already. It is an issue that is going to be debated in the Enron cases. It is a major policy that will have to be debated because the statute, as it stands, includes these two goals.

Second, I would just like to talk about blackout periods. Most of the testimony this morning covered the issues in how blackout periods arise. I just wanted to mention that there are about 24,000 of these conversions or blackout periods that occur every year in this country. Most of them go forward without any problems whatsoever.

[1] The prepared statement of Mr. Saxon appears in the Appendix on page 150.

I wanted to point out in particular that a plan fiduciary, the plan sponsor, has a duty under ERISA to affect a conversion in the interest of plan participants and beneficiaries. And if a plan sponsor makes a decision to affect a conversion and to engage or to impose a blackout period for any reason that is other than in the best interest of the participants, that could constitute a breach of fiduciary duty for which there is already a remedy under ERISA.

With respect to the length of time of blackouts, the length of time can range anywhere from a couple of days to several months or more. The amount of time that you have in a blackout period is really a combination of two factors, the technology that is in place and the condition of the existing assets and records, and how much time is needed to zero out the account balances from the old recordkeeper, test the information, and get it into the new system.

Finally, I would like to make a couple of comments with respect to policy issues and address some of the questions I heard this morning. One issue is with respect to investment advice. We have heard statements this morning that employers are concerned about providing investment advice because they would cross the line and, if they cross the line, they could be deemed to be fiduciaries. And that is true.

I just wanted to point out to the Committee that in 1996 the U.S. Department of Labor issued an interpretative bulletin that we helped write which addresses this exact problem. What the bulletin says is that employers and other fiduciaries can provide all sorts of information about how the plan operates, about stocks and bonds, about investments, including information about the benefits of diversification. They can provide recommendations through an asset allocation model.

They can do all of that without crossing the line and being liable for a breach of fiduciary duty by reason of providing fiduciary investment advice.

With respect to policy recommendations, it would be our major policy recommendation that we look to providing a way of providing more and better education for participants. This is seen in the Enron case. In Enron, 11 percent of the shares that were held in the Enron plan were restricted by the over/under 50 rule, but 89 percent of the shares could have been freely transferable. And I believe that with more and better education about diversification, we may have had a situation where the shares would have been better diversified.

Chairman LIEBERMAN. Those are interesting numbers. You said 11 percent of the Enron stock was locked down essentially by the 50 year old rule?

Mr. SAXON. Yes, sir. Eleven percent was the amount that represents the employer match.

Chairman LIEBERMAN. Eleven percent of the Enron stock held in the 401(k), you mean?

Mr. SAXON. Yes, sir.

Chairman LIEBERMAN. And obviously it is a larger percentage of the employer part, but it is 11 percent of the overall.

Mr. SAXON. And I would add that with respect to many of our plan sponsor clients now, they are already moving to eliminate that kind of restriction. So you will either see a restrictions that says, with respect to the match, you need to hold the shares for 2 or 3 or 4 years, or they are freely transferable immediately. So that is the kind of design changes that some of the plan sponsors are already engaging in.

With respect to the notice provision, it is fairly standard industry practice that a notice of 3 or 4 weeks prior to a conversion and a blackout, that is already standard industry practice. We would not have any problem with that.

I would also point out that, with respect to the restriction that I just mentioned before, section 401(a)(28) of the Code already provides that age 55 with 10 years of service you must permit the participants to diversify.

I realize I have crossed the line on my time. I appreciate the opportunity to speak with you this morning.

Chairman LIEBERMAN. Thanks, very helpful testimony.

Susan J. Stabile, president—professor. I almost made you president. Professor of St. John's School of Law.

## TESTIMONY OF SUSAN J. STABILE,[1] PROFESSOR, ST. JOHN'S UNIVERSITY SCHOOL OF LAW

Ms. STABILE. I think I prefer professor to president.

Chairman LIEBERMAN. Wise choice.

Ms. STABILE. Mr. Chairman and Senators, I thank you very much for inviting me to speak with you today.

Although this hearing is about Enron, it is important to understand at the outset that what happened with Enron's 401(k) plan is not unique. That more than half of Enron's 401(k) assets were invested in Enron common stock does not make the plan unusual. As you have heard already, most 401(k) plans of large public companies have an employer stock fund and employees who participate in such plans invest an average of about one-third of their account in company stock. In many companies, the percentages are much higher, and you heard examples this morning of companies where employer stock represents upward of 90 percent of participants account balances.

The law currently does nothing to prevent these vast accumulations. Although ERISA imposes limits on the acquisition of employer securities by traditional defined benefit plans, and by defined contribution plans in which the employer makes the investment decisions, there is no similar limit applicable to participant directed 401(k) plans. Since 87 percent of 401(k) plans accounting for 83 percent of active plan participants provide for participant direction, it is fair to say that 401(k) plan acquisitions and employer securities are virtually unlimited.

The law, as you have heard, also permits employers to make matching contributions in the form of employer stock and many do. Matches are required to be invested in company stock in about 40 percent of the 401(k) plans that offer an employer stock investment option in their 401(k) plan.

The reasons employees invest such significant portions of their plan account balances in employer securities include a sense of loyalty to their employer, as well as a sense on the part of many em-

[1] The prepared statement of Ms. Stabile appears in the Appendix on page 159.

ployees that they are expected by their employer to invest heavily in company stock and that the failure to do so will be perceived by the employer as disloyal. Also, many employees have an overconfidence in their employer and a bias that makes them think that other companies are more likely to experience downturns than their own employer.

Employers also encourage employees to invest in company stock by requiring that matching contributions be so invested. In plans that require employer matches in company stock, participants direct a higher percentage of their own contributions to that option than in plans where there is no such requirement. Employees appear to interpret matches in employer securities an endorsement or as implicit investment advice by their employer.

Thus, if employees are given unlimited ability to do so, they will invest disproportionately large portions of their 401(k) account balance in employer securities. This suits the interest of employers in that employees represent a group of stockholders who are not likely to operate as an effective check on management. However, Enron's fall has graphically illustrated that such heavy accumulations are not good for employees who, as Ms. Perrotta's testimony this morning powerfully illustrates lose not only vast portions of their retirement savings but their current income and benefits when a company's futures turns south.

If we are concerned with ensuring adequate retirement security, it is necessary to consider regulation in this area. Given the reasons for such heavy accumulations in employer securities, which have very little to do with a failure to understand in general terms the value of diversification, I am not confident that simply requiring more disclosure or education will be effective.

Therefore, I believe that Congress should consider imposing limits on the percentage of participants' account balance that may be invested in employer securities. Since the law already imposes a 10 percent limit on the acquisition of employer securities by defined benefit pension plans and by employer-directed defined contribution plans, it would be a small change to extend that regime to participant-directed 401(k) plans.

Let me move the focus more specifically to Enron because it impacts on some of the proposals that have been circulating in recent weeks. Although, as my earlier comments suggest, the losses suffered by Enron employees are likely to be replicated if any number of other U.S. corporations suffers a serious financial downturn, improper behavior by persons ERISA designates as fiduciaries of Enron's plan may have aggregated the losses.

Let me briefly address two issues. The first is the lockdown and the second is the question of possible misrepresentations to employees. Lockdowns, per se, are not a problem. They are routine and necessary to deal with changes in plan administrators and other changes in a plan or company structure. A decision by Enron to freeze plan accounts to allow an orderly and accurate transfer of records to a new plan administrator is a reasonable one. What does not appear to be reasonable is the timing of Enron's lockdown.

Even if the lockdown was effectuated pursuant to a pre-existing decision to switch administrators, and even if the company gave employees sufficient advance notice of the period during which they could not trade, one has to question the decision of plan fiduciaries to go ahead with the pre-existing plan in light of the circumstances then prevailing. By the time the actual lockdown was set to occur, it should have already been clear to those making plan decisions that the company's financial situation was precarious at best. From testimony you have already heard this morning, it appears that plan fiduciaries may have understood this as early as August, well before any notices were sent to employees about the timing of the lockdown, and therefore, well before there was any question of further confusing participants by delaying the lockdown.

Plan fiduciaries owe participants a duty of prudence and loyalty. Preventing plan participants from being able to transfer out of company stock at that particular time was neither prudent nor in the best interest of plan participants.

You also heard the testimony this morning about the issue of notice to employees. I agree with Mr. Saxon's statement that there should be no question in anyone's mind that ERISA's fiduciary standards require advance notice of lockdowns, that they require accurate notice of the dates of lockdowns. Clearly if notice was not sent to employees in a way calculated to reach everyone or if there were conflicting notices, there may very well be violations of ERISA.

Just briefly concerning disclosures. ERISA has nothing to say about what corporate executives tell employees about a company's prospects. What ERISA does prohibit as a violation of its fiduciary standards is misrepresentations from a plan fiduciary to plan participants. The question of when a company official is wearing his fiduciary hat as opposed to his employer hat is one that frequently gives courts difficulties.

Statements about a company's future prospects, if they are made in the context of discussions about company's benefit plans, and by persons who employees would perceive to be acting in the capacity of plan administrator as well as employer are proper subjects of ERISA regulation. Depending on the nature of the Enron meetings with employees and the content and purpose of E-mails and other written materials sent to employees, there is at least a question whether fiduciary misrepresentations were made.

In closing, 401(k) plans have become the dominant means of providing retirement income to employees, meaning that ensuring the safety and soundness of such plans is essential to the retirement security of American workers. While current law allows redress for many forms of wrongdoing such as may have been perpetrated in this case, it remains that the ability to invest unlimited amounts in employer securities creates the potential for many more Enron-like pension catastrophes and should be addressed by Congress.

I would be happy to elaborate on my views about particular proposals that have been made in response to any specific questions you may have. Thank you.

Chairman LIEBERMAN. Thank you, Professor. We will go through a round of questioning for Senator Carper and myself.

It has been very helpful testimony. ERISA does have general fiduciary duties spelled out which relate to the 401(k) plans. These, as you know, are the basis of the lawsuits that have been filed in the Enron case. The problem here, of course, is this means that employees do not have much recourse to validate their rights except for a lawsuit after the damage is done.

That leads me to ask would it not make more sense to impose clearer guidelines or regulation up front regarding the company's fiduciary responsibilities with respect to 401(k) plans? Professor, you were nodding your head, so you are a good place to start.

Ms. STABILE. One of the reasons that I think an imposition of a limit on the amount of employer securities that can be invested in the plan is a good idea is precisely that, Senator. Leaving employees to after-the-fact redress in a situation where a company is bankrupt does not leave them with very much.

So in addition to the other concerns I have about whether education and advice are effective, I do think a prophylactic solution avoids the practical concern about recourse when a company's financial situation has gone downhill.

Chairman LIEBERMAN. I appreciate that answer. Is there some way that you would make tighter or more explicit, apart from specific prohibitions, such as they cannot have more than a certain percentage of company stock in a 401(k) plan, but make more specific the general fiduciary responsibilities as spelled out in ERISA?

Ms. STABILE. One of the difficulties you have when you talk about the fiduciary responsibilities in ERISA is that those fiduciary standards do nothing to affect losses that are causes by the participant investment decisions themselves. The way ERISA has set up the statutory regime is that if you have a 401(k) plan, a plan in which participants exercise control over their accounts, then the participants are not subject to fiduciary standards and the employer has no fiduciary losses for liability that occurs as a result of the participant's exercise of control.

So we are really limited to regulating decisions that have to do with the actual administration of the plan, such as lockdowns.

As I said in my testimony, as to specific regulation of things like lockdowns, I do not really believe that you need to enact specific rules. I do not think there is any harm to it, but I do not think they gain any benefit either.

Part of Congress's decision in establishing a rubric of fiduciary standards, as opposed to a laundry list of rules, is that the array of decisions involved in plan of administration is so enormous, that except for picking particular things that strike people's fancy at a particular moment, it is very hard as an overall matter to come up with a whole laundry list of specific restrictions.

Chairman LIEBERMAN. Anyone else have a response to the question of whether we ought to try to alter the general fiduciary responsibility language?

Ms. FERGUSON. I think the most important thing in the unique Enron situation is to go beyond the narrow fiduciary duties spelled out in the law, which deal with the folks who have discretion over the investment and management of the fund. If we are to believe the press reports, the principal misrepresentations made here were by the CEO, by Kenneth Lay.

He is sure to argue, "I had nothing to do with the plan," and "My statements were not in the context of the 401(k). They were made generally to all employees." Our hope would be that a court would say that he is a "fiduciary."

But one of the biggest gaps in ERISA, and Senators Williams and Javits who wrote the law initially recognized it in the late 1970's, is that there is nothing in the law that says it is unlawful for an employer to make misrepresentations to its employees in connection with an employee benefit plan, in connection with a 401(k). And that is an enormous gap that has led to tremendous hardships.

There is a series of cases in which you have courts frustrated because there is no right to sue, and of course no remedy. This is an obvious omission that needs to be corrected.

Chairman LIEBERMAN. I think you have engendered some responses. Mr. Klein.

Mr. KLEIN. I would just add, in answer to your question, that certainly to the extent that there is evidence or examples of people being induced to purchase stock at the same time that someone else has inside information about other matters that the general populace of shareholders and employees do not have, that is fraud. That is illegal under the laws of all 50 States. There certainly are fiduciary liabilities that are personal in nature that apply to people who act as fiduciaries.

I know that I serve in that capacity with respect to the 401(k) plan that our organization sponsors for our individuals.

I would just sort of point out again, I guess my role is in part to point out some cautionary notes, that it is a question of balance. One would never want to enact policies that will, because of the fear in our litigious society of being sued, cause a fiduciary to make a decision that actually is not in the best interest potentially of the participants.

I will give you a good example. Right now I am contemplating changing the provider of our 401(k) plan. We are actually very happy with what we have, but some other options that are out there would provide a broader range of investment options and some more opportunities with respect to helpful investment education and advice from a different provider.

I would hate to think, as is partially embraced in one of the proposals that has been set forth last week, that I might be more liable for losses that would occur during the blackout period that would be required to make the change from a current provider to our new potential provider when, in fact, the motivation for making that change was to do something positive for the employees. So it is a balancing act.

Chairman LIEBERMAN. Mr. Olsen or Mr. Saxon.

Mr. OLSEN. My answer to your question is yes, but I do that on the basis of not being a policy wonk or an attorney. I am a retiree of 10 years. However, for the 15 years prior to that, I was CEO of a modestly large company. And somehow, I thought I was responsible for helping to ensure my employees' retirement security. I viewed that as almost a sacred trust of mine and frankly, I was amazed to see that was not the case in other companies.

So while I do not have specific ideas on how it ought to be tightened up, I think the CEO does have a sacred trust when he is dealing with the retirement lives of their employees.

Chairman LIEBERMAN. Good for you. That is the point here that comes out. Unfortunately, human nature does not always bring people to the standard that you followed, but if people could just have a sense of right and wrong and carry it out in what they were doing, there would be a lot less need for Congress to be making laws.

Mr. OLSEN. I would expand on that. Not only was it right, but it was the smart thing to do. You had loyal employees. People knew this and they reacted when pressure times came. It was just smart business and the right thing.

Chairman LIEBERMAN. Well said. Mr. Saxon.

Mr. SAXON. Mr. Chairman, in thinking about your comment, which I think is a good one, what struck me is that what you are really talking about is how do you legislate prudence, and that is a very difficult thing to do. The way I thought about it is if you look at the complaints in the class actions that have already been filed in Enron, you will see two major ERISA causes of action. One is an ERISA prudence allegation that it was imprudent to hold Enron securities. The other one is a fairly new allegation that has arisen just in the last few years, which is a breach of fiduciary duty for failure to disclose information that participants needed to make informed decisions.

Perhaps that is the way we are going here. We are looking at more disclosure. When we are talking about ERISA prudence we are really talking about process. One of the questions that will be looked into in the Enron case is that in addition to all the other investment options that are available under that plan, there was an investment option for employer stock. Did the employer stock option get the same look, did they look at the employer stock the same way as other investments? Did they periodically review that? Did they discuss that?

Obviously, the legal standards that apply there under those court cases that I cited in my prepared testimony and the ones I talked to just a minute ago may be different. ERISA prudence would dictate that you still need to look at that periodically, at least quarterly, and make determinations as to whether you were in compliance with the law.

Chairman LIEBERMAN. A couple more questions on two of the big concerns here and I am going to let you go and let me go. I have to go on to another meeting. One is that some have suggested a time limit on lockdowns or blackouts, as you have called them. There seems to be a consensus that we ought to have a notification period before a lockdown occurs. Also, I think that during a lockdown the executives of the company should not be able to deal in a company's stock because the employees do not.

But the third point, about which I do not think there is a consensus, is whether we should have a time limit on lockdowns. Ms. Ferguson, do you have a thought about that?

Ms. FERGUSON. Again, this needs to be examined, but it seems to me that a lot of work can be done before the actual shutdown. We heard this morning that 11 days was what it would take. If people understood that there was a limited period, let us say 10 days, with an opportunity to go to the Labor Department and get an exception in extraordinary circumstances, I think that would define the parameters. I think a lot more work would be done ahead of time with the 2 companies trying to reconcile the records.

So that the actual freeze on transactions, which you cannot buy the stock or you cannot shift funds, could be very short. But I am not an expert in that and I would defer to those who are.

Chairman LIEBERMAN. I must say that I did not ask the question because there was so much else going on, and I am not going to take the time now, but one of the things that struck me is why, in this incredibly sophisticated age of information technology, there is a need for a lockdown. In other words, why this cannot all happen as quickly as so much else happens in our society?

Mr. KLEIN. I can answer that very quickly for you. While I think that some advance notice of a lockdown period is a good idea, I would strongly caution against a rigid rule on how long such a lockdown period could be because the circumstances are different in every single case.

In the Enron case, what we heard this morning is that they were essentially changing recordkeepers. But sometimes you are changing a whole array of different investment choices such as what we are considering possibly doing in our own organization.

There should be absolutely zero tolerance for any mistake to be made when you are switching over from one system to another. Sometimes the reason that a company may be leaving a prior provider or recordkeeper is that they are not doing a particularly good job and you need to make absolutely certain that there is not a penny's worth of discrepancy when the switchover is made. The new system has to be tested, the computer systems are not necessarily compatible.

Just imagine the ramifications for the employees if a mistake were made, an amount was withdrawn from their paycheck and put in the wrong investment choice, and then during that period of time the investment went down. Would we really want those individuals to suffer those consequences?

So I think we need to give employers and the service providers with whom they are working the opportunity to have some flexibility to respond to different situations.

Chairman LIEBERMAN. Anyone else with a strong feeling, please give me a quick answer.

Mr. SAXON. I represent the recordkeepers. Let me just go through a couple of examples. For any particular plan, each participant has an account. In their account they could have a subaccount for the salary deferral amount, for the employer match, for the profit-sharing contribution. They could have subaccounts for a previous plan where there is a benefit protected. There could be a separate subaccount for the IRA rollover amounts and for after tax contributions.

All of those different subaccounts, maybe nine or ten for each participant, are invested in a variety of investments. Sometimes the investments are all standard form mutual funds. Sometimes the investments are the same exact mutual funds with the same recordkeeper as you have with the new recordkeeper.

But sometimes they are new. Sometimes they involve GICs. Sometimes they involve real estate. And sometimes they involve employer stock which involves additional questions.

So we have seen that you sometimes can get those done in a couple of days. But right now we do not have the technology to definitely tell you that we absolutely could get these done in 8 or 10 or 12 days. Some of them take several months to complete.

Ms. STABILE. I represent no one in this, so I would also like to add my view that I believe imposing an absolute number of days as a limit would represent a dangerous kind of micromanagement. The nature of the changes vary so much, the size of the plan varies, that I think attempting to determine a priori, a maximum number of days would be a very dangerous thing to do, Senator.

Chairman LIEBERMAN. The last question is about the age restrictions on selling the match stock, which surprised me. I guess the question I would ask, maybe to state it most provocatively, is why have any restriction once the stock is vested in the employee? In other words, why have even 3 years or 90 days? In other words, if they own it, they should be able to trade on it. Does anybody object?

Mr. KLEIN. This is clearly the most difficult area I think, and the one that is going to require the most care to see what would employer's reactions be if changes were made in this arena. But I think to look at it from the positive perspective, reasons that employers do have these periods of time, and this has been endorsed by literally decades of bipartisan support that says that employee ownership is a good thing, is that it democratizes corporate ownership, that it allows employers and employees to have the same sort of shared alignment of interests, that, by and large, responsible companies want their employees to have an ownership stake over the long haul.

And these are, after all, retirement plans. The nature of retirement plan is one that you think of for purposes of people being connected with you for a period of time. So while some companies have decided that they have no restrictions in this regard, and I think that we have to respect and applaud those companies that have made that conclusion, I think it would not be correct to assume that companies that do have length of time restrictions, either by number of years or by age, that they necessarily are not looking out for the best interests of their employees or that it is necessarily a bad thing for the employees. The restriction is, after all, related to the voluntary employer matching contribution that is being made, not the individual's own contribution.

Ms. STABILE. My views on these limits in some way depends on whether you are willing to impose an overall limit on the total account held in employer securities. If one had a statutory limit of 10 or 20 percent of the total account balance that could be held in employer securities, I think there is less of a need to be worried about the ability to diversify company stock matches. As you heard already, only 11 percent of the total amount of money in Enron's 401(k) that was held in employer securities represented company matches.

However, if you do not impose an overall limit then I do think allowing employees to diversity out is a good idea, recognizing realistically many employees will never diversify out. Many employees make their initial selection and never go back and change it.

Chairman LIEBERMAN. Ms. Ferguson.

Ms. FERGUSON. I think Jim Klein has highlighted the fundamental problem here. Worker ownership is a good thing. Aligning employee's interests with the employer is a good thing. However, these are retirement plans.

ESOPs and other stock ownership plans were very rare, until quite recently. They were used to bail out a failing company or a small company owner who wanted to retire to Florida and get rid of the company, or as financing devices. They are not retirement vehicles.

What is happening more and more is that the 401(k) is being used more and more like a stock ownership plan. I think it is time for Congress to reassess this. The idea of locking employees in to a sinking ship is just unacceptable and that is what has happened more often than not.

There are also problems with disclosure. We are getting more and more complaints from employees about this. There is a confusion of two concepts: Stock ownership in your company and providing for retirement.

I would just like to put all of this in perspective. Social Security is a terrific system. It provides the average retiree less than the minimum wage, two-fifths of what he or she will need in retirement. People have to have something more.

The reason the 401(k) was so important in the Enron situation was because the company had systematically cut back on the second tier of support, the defined benefit plan. They had frozen it. They had turned it into a stock plan and they turned it into an inadequate hybrid plan. It did not provide enough.

It is critical that if 401(k)'s are going to play a retirement income role that they be diversified vehicles, that employees not be trapped in employer stock, and that the people running the plan offer a wide range of choices.

Chairman LIEBERMAN. Well said. Last word, Mr. Olsen.

Mr. OLSEN. We clearly oppose any age restriction on being able to sell stock, but our idea of giving the employer the option of matching with employer stock or using it as one of the options, I think, would create more of a balanced approach. And as Mr. Klein says, there is a sense of ownership. I think that would give the employer the option, if they wanted, to provide that. And at the same time it would push the program more into a diverse nature for the employees.

So I would just conclude by saying that whenever there is a debate, it is the employee's retirement income security we need to look out for.

Chairman LIEBERMAN. Amen. You have been a great panel. Thanks for your patience in waiting to come on. We will probably take the liberty of consulting with you as this goes on, or you may well take the liberty of consulting with us or conveying your views to us and we would welcome them.

Senator Carper, unfortunately, had to leave for another meeting.

Senator Thompson, who could not be here, will be submitting questions for the record so we are going to keep the record of the hearing open for another 3 weeks.

I thank you all. Our investigation and hearings will go on but for now the hearing is adjourned.

[Whereupon, at 2:03 p.m., the Committee was adjourned.]

# A P P E N D I X

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## PREPARED OPENING STATEMENT OF SENATOR BUNNING

Thank you, Mr. Chairman.

I don't believe there is one person who doesn't feel sorry for the Enron employees who not only lost their jobs, but also lost most of their retirement savings.

This situation should be a wake up call to us all to look at how our money is invested, whether or not our investments are diversified, and whether we have freedom to control our investments.

Congress has the responsibility to get to the bottom of Enron's collapse, and we need to keep the investigations going until we understand exactly what happened in this company.

However, it is already clear that there are some changes that need to be made to our pension laws, including possible changes to our laws governing 401(k) plans.

Several of my colleagues have already introduced legislation in this area, and the Bush Administration has announced recently some changes it would like to see, including:

1. Allowing employees to sell company stock within a relatively short time period,
2. Requiring employees receive 30-days notice before a lock-down period, and,
3. Requiring employers provide certain investment information to employees each quarter.

We have a lot of work to do, but I am confident that we will get to the bottom of the Enron collapse and make the necessary changes.

Thank you, Mr. Chairman.

TESTIMONY OF WILLIAM D. MILLER, JR.

BEFORE THE

U.S. SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

"RETIREMENT INSECURITY: 401(k) CRISIS AT ENRON"

FEBRUARY 5, 2002

Good morning Mr. Chairman and members of the committee. My name is William (Bill) D. Miller Jr. I am the Business Manager and Financial Secretary of IBEW Local 125 of the International Brotherhood of Electrical Workers located in Portland, Oregon. I have been elected to serve in this position since 1983. Our local union represents approximately 3,700 members in five states, including Oregon, Washington, Montana, Idaho and Nevada. Ninety percent of our membership works for 35 distinct electric utility employers, ranging from investor-owned utilities, municipalities, rural electric cooperatives and the Bonneville Power Administration. The remainder of our local union membership is made up of outside line construction workers that perform distribution work on utility properties and build the major steel transmission lines that you see throughout the United States and Canada. The IBEW International office chartered our local union in October of 1900.

We currently represent 911 active employees and 550 retirees of Portland General Electric Company (PGE), a subsidiary of Enron Corporation. We have had a collective bargaining agreement with Portland General Electric or its three predecessor companies since 1900. Additionally, there are approximately 2,200 non-union employees at the company.

The public hears very little about our local union because we are not front page-seekers. We simply work hard to ensure that our customers are taken care of and the lights stay on. Our members are the individuals that you see in the rain, ice and snow doing the hazardous work maintaining and repairing electricity systems ranging from 120 volts to 650,000 volts. We are the people who generate, transmit, and distribute electricity for the public good.

For generations, our industry was one of very stable employment with good wages and a fair benefit package. We worked hard, and in exchange, we enjoyed a secure career with a safe future. This security is what has drawn some very talented people to our industry.

The collapse of Enron has been devastating to our members. When Enron filed for bankruptcy, it took with it many people's dreams, hopes and plans. I have met with and consoled many members as they come to terms with their losses. For example, Tim Ramsey, a 57 year-old lineman from PGE's Western Division. He has worked for the company for approximately 35 years and was planning to retire next year. He lost over

$985,000 and his plans for starting the next chapter of his life are on hold. He may never recover from the devastating effect the Enron bankruptcy had on his hard-earned retirement savings. This is just one story out of hundreds I have heard over the last few months. To give you an idea of the magnitude of the overall losses, a handful of our members at PGE have agreed to allow me to give you their names, ages, years of service with PGE, and losses in Enron stock. Keep in mind that the losses I am about to list represent only the lost stock value since employees were locked out of their accounts in mid-September:

1. Roy Rinard, age 53, 22 years with PGE: $472,000 loss.
2. Al Kaseweter, age 43, 21 years with PGE: $318,000 loss.
3. Joe and Diane Rinard, age 47, 12 years with PGE: $300,000-plus loss.
4. Dave Covington, age 42, 22 years with PGE: $300,000 loss.
5. Tom Klein, age 55, 30 years with PGE: $188,000 loss.
6. Mike Schlenker, age 41, 10 years with PGE: $177,000 loss.
7. Patti Klein, age 47, 24 years with PGE: $132,000 loss.

Just these eight employees – including Mr. Ramsey – have together invested 188 years with PGE and lost $2,882,000.

We have been able to go back and piece together a fairly comprehensive course of events that took place at PGE. I am here today to bring you a perspective from labor that you may not have heard before. As you may know, we have had several IBEW members and retirees come before congressional committees, give interviews to the press and be guests on TV news shows. I believe these perspectives were good and gave a point of view from the impacted worker. However, I want to tell you what really happened to Enron, and what is continuing to happen in the utility industry, as we know it.

Before I detail the chronology of events at PGE/Enron, I must give you a little background information. Enron's meteoric rise in the utility business was founded upon the concept of deregulation in the electricity industry. Enron was the engineer and the driver behind this theory, and its business success depended upon its ability to sell state and federal regulators and lawmakers on the idea of mandating deregulation in legislation. When electric deregulation began its flight in the late 80s and early 90s, the selling point was lower rates and "customer choice." Innocent people had no idea what deregulation meant and what the ramifications could be on electricity prices. They soon found out in California when "choice" meant skyrocketing rates and rolling blackouts. Enron continued to push for deregulation, and focused its resources on building political muscle in the states. I attended meetings where Enron Executives flew in the face of utility management and told them they were going to take over their operations. At that time in history very few people believed that the historic utility as we knew it could soon be up for grabs.

PGE was a trustworthy, solid company with which we had a good working relationship. There is a long history of collective bargaining that involves the PGE retirement/savings plan that dates back to 1978. This was the first year employees were allowed to contribute money from their paycheck to a savings plan that was matched with PGE stock. This savings plan evolved into what we now call an Employee Stock Ownership Plan (ESOP) that was designed to supplement our members' defined benefit pension plan and enhance their retirement accounts. At this time, these funds were not pre-tax or 401(k) type accounts – strictly savings accounts. In 1994, these savings accounts evolved into a 401(k) plan and became more sophisticated as the law allowed. We continued to bargain improvements over the next 20-plus years.

Little did I know how different things would be after I received a phone call on Sunday, July 21, 1996. I was invited to meet with PGE officials that afternoon because there was going to be an important announcement Monday morning. This announcement was going to affect the company and all PGE employees, and PGE felt it was "the right thing to do" by giving the union advance notice. That afternoon, I met with PGE's CEO Ken Harrison, President Peggy Fowler, and Enron's CEO Ken Lay. They told me that Enron was purchasing PGE and had agreed to honor all existing agreements.

Our members, and all Oregonians, were very skeptical of this Texas giant taking over our local utility company. PGE was an important pillar of the Portland community. It was run almost like a family business and the culture was very down to earth. PGE employees were extremely nervous but "skeptically interested" because Enron had been touted as one of the "movers and shakers" in the emerging, deregulated part of the electric utility business. By now, utility companies all over the country were running scared as the threat of deregulation had taken hold. Many in the industry thought that PGE was too small to withstand the pressures that deregulation brought to the marketplace and it could not compete. Enron, however, saw PGE as a cash cow that had the in-house talent and expertise on interconnections to expand their high cash flow and leverage the trading operation. The Oregon Public Utilities Commission (OPUC) was also extremely wary of the deal. It took Enron nearly a year of negotiations and millions of dollars in "community investments" to gain the approval of regulators.

In July of 1997, the takeover of PGE was completed and had been approved by all required regulatory agencies. PGE's stock was approximately $23.00 a share when Enron made the announcement it was purchasing PGE. Enron's stock was at $44.00 per share at that time.

In July of 1997, after the sale was complete, all PGE stock held by employees was converted to Enron stock automatically. There were no other options available to employees. Not only did the stock change in name, but also in nature. It went from a stable, vertically integrated utility stock, to a volatile, high-risk investment. No one told our members that their holdings were now a dramatically different type of investment.

In the summer of 1998, an announcement was made that if the stock did not get to $60.00 a share, Mr. Lay would not get his annual bonus. At this time, we were in contract negotiations with the company, as we are approximately every three years. In a move to dazzle employees, PGE came around handing out $50 bills to all of its workers. They claimed it was a "bonus" for when the stock reached the appropriate level. On August 16, 1999, Enron stock hit approximately $80.00 a share and split.

In April of 2001, Ken Lay told employees that the stock would continue to rise. The company's newsletter ran articles touting their prosperous future, even though Lay was simultaneously selling millions of dollars in company stock. Our members were wondering why the CEO was selling so much stock if the company was doing well?

Also in April, former President and CEO Jeffery Skilling told employees that the stock was undervalued and would go to $120 per share. This was also reported in the Oregonian, the major statewide newspaper in Oregon.

On August 14, 2001, Ken Lay sent an email to employees stating "Enron is one of the finest organizations in business today. Performance has never been stronger." On August 21, 2001 Ken Lay sent another e-mail to employees expressing confidence that stock prices would continue to go up. This was also quoted in the Enron newsletter. On August 27, 2001, Ken Lay announced to employees via e-mail that workers would now have stock options and that Enron stock would be at a "significantly higher price in the future." Our members began to express concern to me and other union officials that they were hearing things in the media and around the shop that made them wonder what was really going on in the company. Every time a question was raised, people were always reassured through an email or some other communication that the company was doing better than expected and would continue to flourish.

On September 27, 2001, our local union received the first complaints that some employees could not access their 401(k) accounts to make changes. For the most part, employees' transactions were conducted on-line, from their PCs. Our members said they could see their accounts on the computer, but could not transfer any assets or make changes. We verified this with workers at three different divisions within PGE. It seemed that the access throughout the company was very inconsistent – workers would call the plan administrator and be on hold, or if they did get through, they were told that the system was down temporarily and to try later.

On September 28, 2001, the company notified the union that their 401(k) accounts would be "locked out" beginning on approximately October 19, 2001 lasting for about one month while changing administrators from Northern Trust to Hewitt. Employees were officially notified of the lock down by company email. If you did not have access to a PC, or were retired, you would not have received notification.

On approximately October 20, 2001, during the lock out period, an IBEW member discovered a change in the interpretation of the diversification rules of the 401(k) plan. Up to this point, our plan only allowed employees over the age of 50 to diversify the Enron stock they had received as into their 401(k). After age 50, they could sell 25 percent per year. This employee discovered a discreet change in the employee handbook that stated that, in fact, employees could convert 100 percent of their Enron stock to other investments at age 50. No one knew about this change in the company policy, or when it took place. The union was not informed of this change, as is required by law, and we were not able to inform our members of this change until the savings plan was in the lock out period. Many of our members wanted to sell their Enron stock during the lock out.

Instead, all they could do was simply watch, helplessly, as the stock price tumbled dramatically and their life savings disintegrated before their eyes.

To summarize the wild ride we were on with stock prices from the beginning of the year through the end of the lock out period:

- January 25, 2001 stock price $81.38
- September 28, 2001 stock price $27.23
- October 19, 2001 stock price $26.05
- October 30, 2001 stock price $11.16
- November 13, 2001 stock price $9.98

Many individuals have criticized the notion of shifting more toward a defined contribution retirement system, and tried to second-guess why our local union did not attempt to strengthen our defined benefit pension plan in our last round of collective bargaining. The answer is very simple to me, but much more complex to those not familiar with the utility industry. Allow me to illustrate. If one looks at the "big picture" of the region's utilities, it is a pretty grim reality. The stability of the surrounding companies has a direct impact on our negotiating with PGE. Avista Power in Washington state, once known as the pillar of the northwest utilities for stability, had trouble making payroll for its existing work force; Puget Sound Energy had just concluded their negotiations with IBEW Local 77 in Seattle, Washington, resulting in a majority of their work force being laid off and replaced by contractors; Pacific Power and Light was sold to Scottish Power from the United Kingdom, and was (and still is) in financial trouble having just terminated their CEO; and Pacific Gas and Electric had filed for bankruptcy as had Southern California Edison. We attempted then, and continue to work toward moving our pensions and all other benefits into an arena that is not employer-dependent.

Our local union, in order to protect our members' futures, is doing whatever possible to get out of employer-controlled health and welfare plans. Almost all utility plans today have what is referred to as a "defined benefit" plan. Nearly all of these plans have a cash-out provision should the employer go out of business (as is occurring with Puget Power described above). Defined benefit plans are good pension plans if an employee makes it to retirement age and the employer is still business when that employee elects retirement. In today's electric utility business, with its high rate of instability, we do not believe this is prudent for utility workers. This type of plan presents too much of a gamble for the average worker if he or she is less than age 55.

The day of the stable utility employer no longer exists, thanks in large part to Enron. Employees of these once stable entities can no longer trust their employer for a true accounting of what their company's future holds for them.

In our case with Enron/PGE, thousands of employees trusted their employer to tell them the truth and the employer deceived them. The fall out from this debacle will affect our country for generations to come. Our people played by the rules – they weren't sophisticated investors, just hard-working, honest folks who became victims of Enron's lies. There is much more that needs to be said and done. Our local union is willing to assist in any way we can, to make sure our tragedy can be avoided elsewhere.

In conclusion, thousands of people have been deprived of their futures. In our small part of the world, our best guess is that in excess of $800 million has been stolen by Enron, ruining nearly 3,100 lives and futures. We had members, guided by their faith in a company and its promises, who lost everything.

What can be done? We hope Congress will make changes in the law to address issues surrounding mandatory stock matches, total percentage of company stock in the 401(k) plan, and advance notice and limitations on the duration of lock out periods.

Thank you for the opportunity to speak before your committee today.

**Testimony of Deborah G. Perrotta**

**before the Senate Governmental Affairs Committee**

**February 5, 2002**

Good morning, Mr. Chairman, and distinguished members of the Government Affairs Committee. Thank you for giving me the opportunity to come here today to share personal insights into the financial, social and emotional impact Enron's demise has had on my family, former employees, pensioners and shareholders.

My name is Deborah Perrotta, and I am a former Enron Employee that was involuntarily laid off on December 5, 2001. I was employed by Enron from January 1998 to December 2001 as a Sr. Administrative Assistant. During that time, I worked for Enron International, Enron Engineering and Construction Company and Enron Energy Services.

Let me take a moment to paint a picture of what it was like to be an employee of Enron.

I was ecstatic and proud to become part of the "Enron Family." There was a lot of competition for jobs at the company. The employees at Enron had great respect for management. We believed that the company was full of opportunity for anyone who was willing to work hard. There was a dynamic of excitement at Enron. They had an unbelievable reputation and were known for hiring the best of the best.

Enron offered tremendous compensation and benefits packages and rewarded employees who exhibiting unfailing loyalty and worked hard for the company's success. I myself gave 110 percent to the company. Many times I worked late into the evenings, and numerous times I received phone calls in the middle of the night from my superiors when they were overseas trying to close business deals. But I did not mind because I really loved the company and my work. I believed the company would live up to its promises and that by working hard, I would be able to secure my financial future

In 2000, we were the darlings of the business community. We received an estimated $40 million in positive publicity. It was a unique environment, where its innovation and values fueled our success. Customers, the financial community, and the company's leadership heralded our success! We had rallies to promote company spirit, they touted our multi million contracts and recognized employees for their personal contribution to company success. A book came out titled Leading the Revolution, which acclaimed Enron as the model " new economy company". Bonuses were routine and accolades commonplace.

This created an atmosphere of great pride, trust, and respect for the management and Enron's invincibility. After all, we went from Fortune 17 to 7. Enron On-line was the largest B-to-B web site in the world, they transacted between 3 to 4 billion dollars a day. We were building the first skyscraper in Houston in 20 years. We signed the naming rights agreement for the new major league baseball stadium for thirty years. We invested millions to launch Enron Broadband Service, when dot coms were going bust. These successes only served to reinforce our invincibility! I was ecstatic to be associated with a winner, whose mission as defined by Mr. Skilling was to be "The

World's Leading Company." If you doubted it, you only had to attend an employee meeting and read our literature to have your any doubts removed. We felt great optimism, security, and confidence about the company's future.

In 2001, Jeff Skilling was named CEO. Soon after, he held an all employee meeting in February, where he touted that the stock would be valued at $120.00 by year-end. He justified it because of the success of Enron Energy Services, the selling of Portland General and many of our international assets that were not profitable. He said these steps would enable us to reduce debt and move from an asset intensive business to a commodity trading company.

After only 7 months, Mr. Skilling resigned for what he and Enron said were personal reasons on August 14, 2001. They said it was to spend more time with his family. As a result, Mr. Lay reassumed the Chairman and CEO position. Shortly thereafter, he held an employee meeting where he reconfirmed confidence in the company and us. He assured employees that Enron's reputation would be restored. He wanted us to continue what we were doing and to stay focused on our mission, while he would spend more time educating the investor community. Mr. Lay said the problem was never an issue of the business model, innovation or profitability, but rather that investors didn't understand how we made money. A tape of this meeting has since been widely broadcast by CNN and others.

Mr. Lay followed up that meeting with an e-mail dated 08/27/01, giving me shares valued at $36.88 per share. In the memo he says and I quote "As I mentioned at the employee meeting, one of my highest priorities is to restore investor confidence in Enron. This should result in a significantly higher stock price. I hope this grant lets you know how valued you are to Enron. I ask your continued help and support as we work together to achieve this goal." From this memo, many others and I were encouraged, since he was a seasoned executive with great integrity and respect.

Then on October 16th, Enron made the first announcement that something was really wrong-- the $1.2 billion equity write-down.

We who worked at the Houston headquarters, received notification in September that we were changing saving plan administrators, and the last date for any investment fund balance changes would be October 26, 2001. The notice stated that certain kinds of fund transactions would not be possible after October 19, 2001. Finally, the notice said that the transition period would end on November 20th.

Though we received an email November 14 saying a new plan website was up, that email did not say that we could now make investment fund balance changes. I don't know when it became possible to do that again. I know employees of Enron subsidiaries and retirees have testified their lockout periods were longer-- I hope you can get to the truth of how long these periods really were and whether everyone was really treated the same. I assume that the new vendor, Hewitt, has records of when they processed the first transactions after the freeze ended and whether all plan participants were treated the same.

During this period of the lockout Enron's stock price fell by more than 50% -- from 15.40 at the close on October 26 to 7 dollars at the close on November 20. This occurred during a period when allegations about improprieties were being lodged against management as a result of the special purposes entities (SPE's) and Mr. Andy Fastow's alleged involvement and personal gain. For example, during the lockout period Enron issued its 8-K on November 8, 2001. That 8-k was a major disclosure restating Enron's earnings back to 1997 which led to the erosion of Enron's credit rating and its trading business.

Less than two weeks after the freeze ended, Enron filed for bankruptcy on Sunday, December 2, 2001. Two days earlier, Enron cut $105 million in retention bonuses for a small number of executives. The next day, Monday, December 3, 2001, I and 4,500 Enron employees in Houston were fired. According to the Enron's Policy and Procedure Manual, we were owed an estimated $150 million in severance and vacation pay. When we asked for it, they said they couldn't pay us because the bankruptcy court was making all financial decisions. A couple of weeks later many of us got checks for $4,500 in severance, less taxes and insurance, really about $3,000, but haven't gotten a penny. I understand that even though the company promised us severance payments averaging roughly $37,000, and even though there are billions of dollars in assets still in the company, we have to wait in line behind the big banks in bankruptcy court. And we hear there won't be much left to all the victims of Enron after those banks have been paid off. For employees, there won't be much, if anything once it is all said and done. It may be the Law, but it's wrong.

When I read about the executive bonuses in the paper I was so angry that I covered my car with posters that said "to management at Enron—how can you justify taking your $55 million when thousands of us didn't get our severance?"

Due to the layoff, freezing of the 401k plan and loss of severance, I and thousands of others lost the resources we had counted on and worked for to pay our bills, fund our retirements and feed our families. I'm not alone in my pain, I'm just one of the thousands former employees and retirees, desperately looking for relief and eventual reform. I really didn't want to come here, but I saw this an opportunity to bring light to the pain and suffering of others as well. Herein lies many lessons for the American worker and I'm sorry I'm an example.

In 1997 my family and I were rebuilding a nest egg as a result of some adversity we experienced a few years early. My layoff and loss of 401k came at a time when my oldest daughter was preparing for her wedding in September 2002. As such, financial commitments were made increasing my frustration and anxiety. As a mother this is something I always dreamt of doing for my daughter. Today that burden has fallen on her shoulders. Since I was with Enron for 5 years, my losses were $40,000. Now when you couple the loss of medical coverage, dental, life insurance, and the struggle to pay my most basic needs, like food, mortgage, car payments, etc. you can appreciate why I am here before you. The demise of Enron has affected every one in my family emotionally and physically. Our monthly prescription costs are more than $300.00, and we cannot afford it. Without employment, we can last but a few more months. This is embarrassing for my family and me since we have a strong work ethic and always had faith in the system. But I must say that my family and I are among the lucky.

Besides losing their 401k's many laid off Enron employees are losing their homes, have medical expenses and face an uncertain future that only a short time ago looked bright. A poll of 482 former employees/shareholders taken on January 28, 2002 showed a sum of $363 mm dollars was lost from their 401K accounts. Five of my friends' total losses combined exceeded $6 mm. This may sound like these were rich people, but this was money that they were planning to live off in retirement. For my friends in there fifties, this money simply cannot be replaced. And this is only the tip of the iceberg!

Obviously, many retirees were greatly affected. One e-mail I received stated "I am still in a state of shock about the events and I was not astute enough to get out of my 401k when the price of stock was at a reasonable level. I rode the damn stuff right into the ground and now I have nothing from my Enron retirement plan. I was hoping to retire in 2-3 years but after sinking a lot of money into Enron stock and savings plan, looks like I will be doing pipeline work when I have a white beard."

On January 28th when traveling to Washington by bus we stopped in Baton Rouge, and I met Mr. Kling, a retired Enron employee. He met us with tears in his eyes and told the group how much he really appreciated our efforts since he retired two years early and now has seen his 401k money disappear. At age 72 his future is behind him, and he is considering going to work to make ends meet.

This isn't right. American workers shouldn't be experiencing these feelings of loss, despair and hopelessness. We worked hard, many of us as hard as we possibly could, often at the expense of our families. We put all our ingenuity and creativity at the service of a company we believed in and trusted and were certain would reward our commitment. When Enron told us its business was sound and its stock was going to go up – we believed them. We put our money in the company's stock in good faith and Enron's leadership and government let us down.

I'm here asking for my family and the thousands of other families whose lives have been destroyed by a handful of individuals. We need your leadership now. We need financial relief now. We know you can't replace the loses in the 401k plan, but you can create legislation to provide immediate relief and eventual reforms that would protect the American worker in the future. We think you need to do two things. First, you need to make sure that if a company wants its workers to put their retirement money in the company's stock, that company needs to back up that stock with some kind of insurance so that those employees aren't at risk of losing everything. Second, we need bankruptcy reform that gets workers a real place at the table when their employer goes bankrupt, and particularly when those workers are the victims of fraud.

In closing, I like my colleagues loved Enron and were passionate about its success. We believed Enron's leadership and the endorsements by others of its success and future prosperity. Now the company's own board members say they inflated the earnings by over a billion dollars. This should not and cannot ever happen again in America.

Perhaps our trust in Enron's leadership and board of directors was misguided. My fellow ex-Enron employees and I came to Washington with some faith that our government would right the terrible wrong that has been done to thousands of Enron employees and pensioners. I hope that faith is not in vain for many of us are desperate and have no place else to turn.

Thank you.

# STATEMENT OF JOSEPH P. SZATHMARY ASSOCIATE NORTHERN TRUST RETIREMENT CONSULTING, LLC

## UNITED STATES SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS HEARING

February 5, 2002

Good morning Mr. Chairman and members of the Committee. My name is Joseph P. Szathmary (zath-mary), and I am an Associate at Northern Trust Retirement Consulting, LLC ("NTRC"). In that position, I was in charge of client relations for the Enron Corporation account with NTRC. I am a native of Brooklyn, New York and a graduate of SUNY-Oneonta. I have worked in the retirement plan services industry for twenty years. In 1992 I moved to Atlanta, Georgia, and I began working for NTRC in 1999. I appreciate the opportunity to explain to you the administrative services provided to Enron by NTRC.

NTRC offers a variety of services to assist retirement plan sponsors in administering their programs. Headquartered in Atlanta, Georgia, the company employs approximately 600 people. NTRC is a wholly-owned subsidiary of Northern Trust Corporation, a multibank holding company based in Chicago, Illinois. Northern Trust's subsidiaries have offices located in Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Pennsylvania, Michigan, Missouri, Nevada, New York, Ohio, Texas, Washington and Wisconsin.

From October 1993 until November 1, 2001, NTRC acted as the recordkeeper of the Enron 401(k) and several other Enron retirement plans. Pursuant to the Enron 401(k) services agreement ("Services Agreement"), NTRC agreed to perform certain ministerial and recordkeeping functions for Enron and the Enron 401(k) administrative committee ("Enron Administrative Committee"), an entity comprised entirely of Enron personnel. The Services Agreement provided that the duties and responsibilities assigned to NTRC were to be performed within a framework of policies, interpretations, rules, practices and procedures established by Enron and the Enron Administrative Committee. The Services Agreement did not give NTRC any discretion with regard to the management of the Enron 401(k) or the management, investment or disposition of plan assets. More specifically, as recordkeeper, NTRC did not establish the terms and conditions of the Enron 401(k), including investment options.

In the fall of 2000, Enron representatives told NTRC that Enron planned to consider other service providers. I understand that several companies competed for the contract, including NTRC. In April 2001 NTRC met with Enron to discuss NTRC's proposal to continue its administrative services with respect to the Enron 401(k).

In July 2001 Enron formally informed NTRC that it had decided to transfer the recordkeeping services for its 401(k) to Hewitt Associates. Enron informed NTRC that it would terminate the services provided by NTRC effective October 1, 2001. In August 2001 Enron changed that date to November 1, 2001.

As is customary, Enron, in its capacity as the plan sponsor, and Hewitt Associates, in its capacity as the incoming recordkeeper, designed and directed a plan for transition. Hewitt Associates created a detailed timetable setting out the numerous acts that needed to be accomplished for a smooth transfer. Under the timetable, Hewitt Associates designated October 19 as the last day for certain types of transactions, including the initiation of participant loans, and October 26 as the last day for participants to transfer balances between the plan's various investment fund options. NTRC did not set the conversion date or the timetable for the conversion of the recordkeeping and administration of the Enron plan.

On October 25, 2001 Enron telephoned me to inquire about NTRC's ability to further delay the conversion and requested a January 1, 2002 transfer date. I said that NTRC could further delay the conversion period, but the January 1 date could present problems because of year-end processing demands. I suggested that a March 31, 2002 conversion date would be preferable. Later the same day, Enron notified me that the Enron Administrative Committee had decided that the transition would take place on November 1, as previously planned.

It is standard industry practice for daily valued plans to suspend participant activity, including investment choices, during part of the period of transition from one service provider to another in order to ensure that participant records are properly reconciled. The length of time of suspension periods varies depending on the complexity and size of the plan. The suspension period plan and timeline applicable to the Enron 401(k) were proposed by the successor recordkeeper, Hewitt Associates, and subsequently approved by the Enron Administrative Committee. NTRC did not set or control the suspension period applicable to the Enron 401(k). NTRC also did not develop the plan for notifying Enron employees of the impending suspension period and the temporary restriction of their access to the Enron 401(k) accounts. I understand that Enron, acting in consultation with Hewitt Associates, developed the plan for notice to affected employees.

The suspension period of the Enron 401(k) began on October 29, 2001. This was the first business day on which the participants in the plan were unable to transfer balances into or out of the various investment options. As discussed, Hewitt Associates became the recordkeeper on November 1, 2001. I understand that Hewitt Associates restored the participants' ability to transfer plan balances on November 13, 2001.

Finally, I would like to stress that NTRC performed all of its duties properly, professionally and responsibly. NTRC fully complied with all of its obligations in connection with its administration of the Enron 401(k) and the transition of the recordkeeping services for that plan.

Again, Mr. Chairman and members of the Committee, thank you very much for the opportunity to testify today. I would be happy to respond to any questions you may have.

STATEMENT OF CATHERYN GRAHAM ON BEHALF OF HEWITT ASSOCIATES
SUBMITTED TO
THE COMMITTEE ON GOVERNMENTAL AFFAIRS
OF
THE UNITED STATES SENATE ON FEBRUARY 5, 2002

Mr. Chairman and Members of the Committee, my name is Catheryn Graham and I am an Engagement Manager with Hewitt Associates LLC ("Hewitt"). I am based in Hewitt's office in The Woodlands, Texas, which is located just north of Houston. I appear before you today on behalf of Hewitt at the invitation of this Committee to discuss Hewitt's role as the successor record keeper for the Enron Corp. Savings Plan (the "Enron 401(k) Plan"). Hewitt Associates is a leading provider of human resources outsourcing and consulting services. Headquartered near Chicago, Illinois, we employ about 13,000 associates who work in 37 countries. Our client roster includes more than two-thirds of the *Fortune 500* and more than a third of the *Global 500*.

Hewitt believes it is entirely appropriate for this Committee to examine issues related to Enron's 401(k) Plan and I am pleased to provide this testimony voluntarily to assist the Committee in the exercise of its oversight responsibility. Let me say at the outset that our role with respect to the Enron 401(k) Plan is limited to serving as its record keeper. This includes daily plan processing; administration of loans from the plan; performing compliance testing mandated by or under various provisions of the Internal Revenue Code; operating a call-in center and web site to respond to participant inquiries regarding their account balances and activity; preparing and mailing participant statements; and preparing the annual Form 5500 report required by the Internal Revenue Service. Hewitt did not create or design of Enron's 401(k) Plan;

nor was it our decision whether or when to change record keepers. Our responsibility was and continues to be providing Enron with record keeping services of the highest quality.

The Enron 401(k) Plan is governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As with all plans subject to ERISA, the Enron 401(k) Plan has an employer sponsor, Enron Corp. The sponsor of an ERISA benefit plan is responsible for making decisions regarding the establishment and design and possible termination of the plan.

Each ERISA benefit plan must be embodied in a written document. That document either names fiduciaries or specifies a procedure by which the plan sponsor designates certain individuals or groups of individuals as plan fiduciaries. A plan fiduciary is a person who (i) exercises discretionary authority or control over the management of the plan or authority or control over management or disposition of the plan's assets, (ii) renders investment advice for a fee or other compensation, or (iii) has discretionary authority or control over the administration of the plan (such as making determinations as to the eligibility for participation in the plan, benefit claims determinations, and the retention of service providers to aid in the operation of the plan). The actions of a plan fiduciary are subject to stringent rules of conduct set forth in ERISA, including the requirement that the fiduciary act solely in the interests of plan participants and their beneficiaries. Each plan has a named fiduciary called a Plan Administrator charged with overall responsibility for the plan. The Plan Administrator of the Enron 401(k) Plan is the Administrative Committee, which is comprised of a group of Enron employees appointed to the Committee by Enron.

Each ERISA 401(k) Plan must, by definition, have a trust in which the plan's assets are held. In the case of the Enron 401(k) Plan, the trustee holds the plan's assets consisting of both employee and employer contributions. In the 401(k) plan context, each participant directs the investment of his or her plan account according to the plan design as determined by the Plan Sponsor. The trustee holds, transfers and disburses those assets pursuant to each participant's individual direction, but has no discretionary authority over the investment of those assets. The trustee of the Enron 401(k) Plan was the Northern Trust Company until November 2001, when the Wilmington Trust Company became the trustee.

Finally, each ERISA 401(k) Plan has a record keeper whose responsibility is to maintain the records of the plan and perform certain related services such as providing reports to the plan participants. The record keeper in the case of the Enron 401(k) Plan was Northern Trust Retirement Consulting Services ("NTRC") until November 2001, when Hewitt assumed that position. As a general matter, the role of the record keeper with respect to any plan is purely ministerial in nature. That is, it is not intended to confer any discretionary authority upon the person or firm providing that service.

Hewitt's Administrative Services Agreement ("Agreement") with Enron specifies the mutual understanding of Hewitt and Enron that Hewitt is not a plan fiduciary within the meaning of ERISA and that Hewitt has no discretion with respect to the management or administration of the Enron 401(k) Plan or changes to or interpretations of plan rules or policies pertaining to eligibility or entitlement of any participant to benefits under the plan. Under the Agreement, Hewitt also has no control or authority over any assets of the Enron 401(k) Plan, including the investment of those assets. Finally, the Agreement provides that all discretion and control with respect to the terms, administration or assets of the Enron 401(k) Plan shall remain with Enron or with the plan's fiduciaries.

Let me now turn to the events relating to the selection of Hewitt as the record keeper for the Enron 401(k) Plan and the transfer of those responsibilities to Hewitt. Prior to June 2001, Hewitt's relationship with Enron consisted primarily of providing actuarial services for Enron's defined benefit pension plan and data consolidation and production services for reports to benefit plan participants. In early 2000, Enron retained the services of a third party evaluator (Watson Wyatt) to manage the process by which other firms would be selected to provide services in connection with several of the Enron benefit plans, including the record keeper for the Enron 401(k) Plan. This process began in March 2000. In May 2000, Hewitt submitted a bid to provide plan record keeping services for Enron's defined contribution plans (including the 401(k) Plan), defined benefit plan, and health and welfare plans. However, Enron thereafter opted not to change the record keeper for its defined contribution plans at that time. Hewitt was not chosen to provide record keeping services for the other Enron plans.

Enron renewed the bid process in February 2001 and Hewitt was asked to update its earlier proposal. As Enron was seeking a "bundled solution", meaning Enron was looking for both a record keeper and trustee, Hewitt obtained a quote from Wilmington Trust Company. Hewitt and Wilmington Trust Company made submissions in response to the Enron request. Enron selected Hewitt as the record keeper in May 2001. After an independent review, Enron accepted Wilmington Trust Company to be the new trustee. Hewitt and Enron signed a letter of intent in June 2001. The letter of intent contemplated that Hewitt would begin work immediately, as I will describe in a moment, and ensured that Hewitt would be compensated for the work it performed if a formal contract was not ultimately executed. I was designated as the Engagement Manager for the Enron 401(k) plan assignment and our team began work immediately.

On June 28, 2001, we met with representatives of Enron's Benefits Department to review our "Delivery Model". This is a document which describes the services we would normally expect to provide as record keeper, additional services we could provide and a list of the services we do not provide, such as legal, tax and investment advice. In this meeting, we reviewed the Delivery Model in detail to make a preliminary determination of what services would be provided by Hewitt with respect to the Enron 401(k) Plan. On June 29, 2001, we held a similar meeting to discuss nonqualified benefit plans for which Hewitt had also been selected as the record keeper.

In July 2001, we began the "Requirements Process" with respect to the Enron 410(k) Plan. This was a detailed and comprehensive process intended to identify exactly what services and administrative processes we would in fact provide as record keeper and how and when we would provide them. During the Requirements Process, we also needed to address the issues arising out of Enron's desire for a "live date", completion of the transition process, in October 2001. The "live date" is the date on which participants in the 401(k) Plan would be able to direct any transactions available to them under the terms of the Plan (e.g. withdrawals, loans and changes in investments) with Hewitt as the record keeper. At that time, Enron's proposed "live date" was October 23, 2001.

As part of the Requirements Process, we had to identify all of the tasks that needed to be completed and establish target dates for each of those tasks in light of Enron's proposed live date of October 23, 2001. This involved Enron and the service providers: Hewitt, Wilmington Trust Company (the new trustee), Northern Trust (the old trustee), and NTRC (the old record keeper). In the case of large plans such as the Enron 401(k) plan, a transition period, commonly referred to as a blackout period, is standard. A blackout period is designed to ensure accuracy of the data transferred by the old record keeper and to enable the new record keeper to transfer the data to its system and confirm its operational integrity. Trustees need to follow a similar process if trustees are changing. During all or portions of this period, plan participants are restricted in their ability to deposit or withdraw funds or to change their investments.

With respect to the Enron 401(k) Plan, the Enron Benefits Department, following consultations with the service providers, established a blackout period that would begin on September 14, 2001 and end on the live date of October 23, 2001. The planned blackout period was two-tiered: (1) participants were restricted from taking loans, withdrawals, rollover contributions and the like from the close of trading on September 14, 2001 to October 23, 2001, and (2) participants were restricted from changing investments in the fund options provided in accordance with the Plan, including the Enron Corp. stock fund, from the close of trading on September 26, 2001 through October 23, 2001.

The Requirements Process continued through September 2001 as we focused not only on the transition issues, but also on how the Plan would be administered following the transition. Indeed, the overwhelming majority of our time was devoted to the post-transition administration issues. These issues included building an internet site for the Plan; setting up a voice response system; establishing a benefits center and training its personnel; establishing a communications system with the trustee and fund managers; and other similar tasks.

In mid-August 2001, we found it necessary to revisit the transition issues, including the timing of the blackout period. Specifically, we received a telephone call from the Enron Benefits Department indicating that Enron decided to make several plan design changes. Among other things, Enron had decided to convert three investment fund options from Vanguard funds to Fidelity funds. In addition, the Enron 401(k) Plan provided two investment fund options involving Enron-related stock, one for Enron Corp. stock and one for the stock of its former subsidiary EOG Resources, Inc. Contrary to our original expectations, Enron opted not to combine these two options. By reason of these and other changes, Hewitt was required to rework certain of its previously completed programming.

We estimated that these and other proposed changes by Enron would require two to three weeks additional work. We were informed by the Enron Benefits Department that the open enrollment period for Enron's health benefit plan was scheduled for the period November 1-19, 2001 and that the Benefits Department preferred that the live date for the 401(k) plan occur after the expiration of open enrollment period for the health benefit plan. As a result, the live date for the 401(k) plan was rescheduled by Enron from October 23, 2001 to November 20, 2001, with the asset transfer date to the new trustee set for November 1, 2001 and the blackout period for loans, withdrawals, rollover contributions, etc. set to begin at the close of trading on October 19, 2001 and continue through November 19, 2001. A participant's ability to change his or her investment among the fund options as provided in the Enron 401(k) Plan, including the Enron Corp. stock fund, would be limited for a shorter period from close of trading October 26, 2001 through November 19, 2001.

We completed the Requirements Process and in late September 2001 Enron approved the final requirements documentation. This documentation spelled out in great detail the way in which Hewitt would provide services as Enron's new record keeper and included such items as sample correspondence, responding to communications from plan participants, flow charts showing how work would move through our record keeping system and so on. Thus, by the end of September 2001, we had reached agreement with the Enron Benefits Department on how we would handle the transition and how we would perform our services as record keeper following the live date. On September 26, 2001, more or less simultaneous with the completion of the Requirements Process, Enron and Hewitt executed the Administrative Services Agreement, thus ending our work under the letter of intent that had been executed some months earlier. This time sequence in signing a final agreement was typical of the process that occurs in cases where a large benefit plan changes record keepers.

As plan sponsor, Enron was responsible for notifying plan participants of the changes in trustee, record keeper and certain investment options. At Enron's request, Hewitt drafted a communication for Enron's review. Enron revised the draft and Hewitt incorporated the changes directed by Enron, obtained Enron's final approval of the text and design and then had the communication mailed on October 4, 2001, using address lists provided by Enron and NTRC. At this point in time, Hewitt had not received population data from which it could have prepared mailing labels. A copy of that communication is attached to this testimony. I understand that there were other communications by Enron, but Hewitt did not participate in the preparation, review or distribution of those communications and, to my knowledge, did not see any of them until after they had been distributed to participants.

As I indicated earlier, the blackout period for loans, withdrawals, etc. actually began after the close of trading on October 19, 2001. The blackout period for changes in investment options, including the Enron Corp. stock fund, was scheduled to begin after the close of trading on October 26, 2001.

On October 25, 2001, after the first phase of the blackout period had begin, Hewitt was contacted by a member of the Enron Benefits Department posing a few questions. Specifically, we were asked about the systems issues and similar practical consequences of accelerating the live date by shortening the blackout period. We were also informed that Enron's counsel had concluded that Enron had met its fiduciary obligations under ERISA with respect to the implementation of the blackout period. We were asked to comment. Finally, Enron mentioned the possibility that they could just postpone the whole conversion for some period of time.

Enron asked that we respond to these questions that same day and we did so. With respect to accelerating the live date, we pointed out a series of risk considerations. These risks included the adverse effects on plan participants of commencing our record keeping activities with incorrect plan data due to a shortened review period and the possible compromising of the quality of the services we could provide to plan participants. In addition, we noted that similar data quality issues could arise with respect to the new trustee's reconciliation process.

With respect to Enron's conclusions about compliance with ERISA's fiduciary responsibility principles, we said that, following a brief consultation, one of our internal legal consultants concurred in Enron's views. We cautioned, however, that Enron needed to rely on its own legal counsel because Hewitt, as a consultant, does not provide legal advice. Finally, we discussed some of the factors Enron would want to consider in deciding whether to delay the transition period in its entirety. These factors included extra cost, staffing implications, and the inability to predict whether the Enron stock would be any less volatile. We also made clear that we would work with Enron to accommodate any changes it might decide to make in the schedule.

Later on October 25, 2001, a member of Enron's Benefit Resources Department called to notify us that a determination had been made that the transition would go forward on the then current schedule. This meant that the restrictions on changes in investment allocations would take effect at the close of business on the next day, October 26, 2001. Of course, as I have noted, the first phase of the blackout period had already begun on October 19, 2001.

On October 30, 2001, Enron's Benefits Department contacted Hewitt and requested that members of the Hewitt team attend a meeting of the Administrative Committee on November 1, 2001. On November 1, 2001, two of my colleagues from Hewitt and I attended portions of a meeting of the Enron Administrative Committee. We had been asked to be prepared to discuss whether it would be feasible to shorten the blackout period by accelerating the live date to November 13, 2001. We informed the Administrative Committee that Hewitt could meet this more accelerated time table, but we indicated that our actual ability to do so was obviously dependent on the receipt of the necessary data from NTRC, the existing record keeper, in a timely fashion and in reliable and compatible form. We received the data transfer from NTRC on November 7, 2001 and, four business days later, Hewitt met the accelerated live date of November 13, 2001.

At the meeting on November 1, 2001, the Administrative Committee also asked Hewitt whether it would be feasible to halt the process in place and have Northern Trust and NTRC simply reassume their respective duties as trustee and record keeper until a later date. We responded that the asset transfer to Wilmington Trust already had occurred that morning and that only Northern Trust/NTRC could advise Enron whether such a course of action was feasible. By the end of the meeting the Administrative Committee instructed Hewitt to continue and to seek to have an accelerated live date.

On November 8, 2001, at the request of Enron, a postcard was mailed by Hewitt to participants indicating that an effort was underway to shorten the blackout period and urging them to monitor the Enron web site for news as to live dates and other pertinent information. A copy of that communication is attached to this testimony. Again, Hewitt used the address lists provided by NTRC and Enron. Hewitt then completed its work, as did Wilmington Trust, and the Enron 401(k) Plan went "live", with Hewitt as record keeper, on November 13, 2001.

Let me conclude, Mr. Chairman, with the observation that for Enron, as with all our clients, we provided professional services of the highest quality. Our associates worked diligently and responsibly to implement the decisions the client made. In our role as the record keeper, our associates could not and should not make those decisions. We welcome this opportunity to make our knowledge of the facts available to the Committee and I would be pleased to respond to any questions the Committee may have.

October 4, 2001

what's new | | what's the same


## Enron Corp. Savings Plan Changes

**money in *motion***

ENRON

## What's NEW?

In late November, Hewitt Associates will become our new administrator for the Enron Corp. Savings Plan, providing improved customer service and quicker processing of your requests. Hewitt is recognized as a leader in benefit plan administration, with a reputation of providing quality service to many Fortune 500 companies.

### Fund Changes

On November 20, the Fidelity Freedom™ Funds will replace the Vanguard LifeStrategy® Funds. These new funds invest in a wide variety of underlying Fidelity mutual funds to provide you with broader diversification. And speaking of diversification – all investment funds will now be listed by asset class in order of risk factor – from the least risky to the most risky.

| YOUR ACCOUNT BALANCE WILL MOVE FROM THESE INVESTMENT OPTIONS | | TO THESE OPTIONS WITH SIMILAR INVESTMENT OBJECTIVES |
|---|---|---|
| *Vanguard LifeStrategy Conservative Growth | → | Fidelity Freedom 2000 |
| Vanguard LifeStrategy Moderate Growth | → | Fidelity Freedom 2010 |
| Vanguard LifeStrategy Growth Portfolio | → | Fidelity Freedom 2020 |

*default fund

### Loans, Withdrawals and Distributions

There may be a time when it is necessary for you to use a portion of your funds; so we've made it simpler for you to make withdrawals and take loans. There's an easy paperless process for in-service withdrawals and distributions (now offered on a daily basis). The loan administration fee will be $35.

### New Website Features

- Personal Rate of Return
- Reduced Self-Directed Account (SDA) fees
- Retirement Report Card – coming soon
- **Password Hint** – No more hunting for that PIN; assign your own and use the hint to help you remember

### A GREAT NEW FEATURE FOR ACTIVE EMPLOYEES

*Will my finances support my long-term goals?*

*What funds should I invest in, and how much should I put in each fund?*


In early December, Enron will offer you an online investment education and advice tool that will help turn your financial dreams into reality. The new mPower website will feature a personalized Retirement Report Card to help you quickly determine your financial readiness for the future. mPower is the nation's leading provider of online retirement planning advice. mPower takes the guesswork out of investing, and in just a few minutes can provide personalized and fund-specific answers to important questions.

**WATCH FOR MORE INFORMATION ON THIS POWERFUL NEW FEATURE.**

## What's THE SAME?

- The same great benefit
- Easy access through the web or voice response system
- Benefit service representatives to help you when you need personal assistance
- One phone number to remember for access to your benefits

## IMPROVED SELF-DIRECTED ACCOUNT SERVICES

Hewitt Financial Services, in partnership with **CSFB*direct*, will replace Charles Schwab as the brokerage firm providing this service.** Backed by Credit Suisse First Boston, CSFB*direct* offers you a comprehensive line of brokerage products, including extended-hours trading and reduced commissions for online stock trades. However, there are some minor changes that you need to be aware of listed below.

### Have a Current Schwab Account? READ ON!

At 3:00 PM CST on October 19, your Schwab Personal Choice Account will be frozen until 8:00 AM CST on November 20 when the transition period ends.

### Don't Panic!

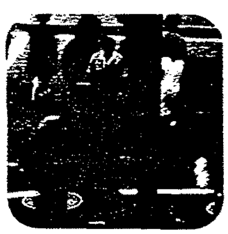
Your holdings as of market close on October 19 will NOT be liquidated! They will remain invested and moved **in kind** to CSFB*direct*.

#### *Schwab Mutual Funds No Longer Available*

If you are invested in Schwab's family of mutual funds, you must choose an alternative investment before the transition period begins. If you do not choose an alternative, your funds will be liquidated and transferred to the Money Market Fund and will remain there until the transition period ends.

#### *SDA Contribution Allocations No Longer Allowed*

Effective November 20, all contribution allocations must be made among the core funds. If you have not changed your allocation by 3:00 PM CST on October 26, your funds will be allocated to the Fidelity Freedom 2000 Fund.



**Current Schwab account holders will receive a Welcome Kit in November. For information visit www.hewitt.csfbdirect.com**

To establish online access to your CSFB*direct* account, you must call 1-800-890-3200 after November 12.

# TRANSITION ACTION ITEMS

Your fund balances will remain invested during the transition.

## ask...

During the transition period, you will NOT have access to your funds. Your fund balances will remain invested in the market based on your fund choices as of 3:00 PM October 26. All activity must be completed by the dates shown below.

## why...

Fund balances of approximately $1.4 billion for 24,000 participants will be moved and balanced. Each record must be correct for every account, i.e. before-tax, after-tax, company match, etc. Once the records are balanced, investment returns and November payroll contributions will be added.

**october 19**
3:00 PM CST

***Last Date For:***

- Loan Requests
- In-Service Withdrawals & Distributions
- Hardship Withdrawals
- Loan Payoffs
- Rollovers into the Plan
- SDA Schwab Fund Liquidation

**october 26**
3:00 PM CST

***Last Date For:***

- Investment Fund Balance Transfers/Allocation Changes
- Contribution Rate Changes

**november 20**
8:00 AM CST

***TRANSITION ENDS...***

**Savings Plan system opens with all the great new features!**

## No Excuses...

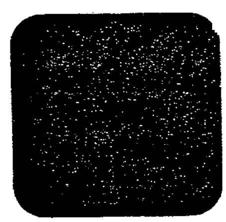
The Savings Plan is a great benefit provided by Enron. It allows you to save for the future by making contributions directly from your paycheck on a pre-tax basis—before any federal or state income taxes are deducted. The company match...it's like receiving free money!

For complete details on the Plan, refer to the Money-in-Motion guide on the Enron Intranet site or contact a Benefits Service Representative.

# CONNECT

**1** **Internet**
Access your Savings Plan through
**enron: benefits.enron.com**
**home: http://resources.hewitt.com/enron**

**2** **Voice Response System**
Access your Savings Plan 24/7 by calling (800) 332-7979, option 3. Benefits Service Representatives are available Monday through Friday, 8:30 AM to 5:00 PM CST.



**EnronBenefits**...*keeping pace with your lifestyle*

2001

Enron Benefits Service Center
2601 Research Forest Drive
The Woodlands, TX 77381

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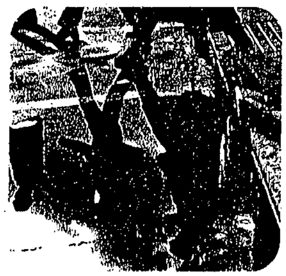
PERMIT NO. 5086



what's new · what's the same

# ask

Enron Corp. Savings Plan Changes

November 8, 2001

Enron Corp. Savings Plan Transition Updates

money | **in** | *motion*

# STAY CONNECTED

www.enron.com/benefits

# 1 STAY CONNECTED FOR UPDATES

## What's HAPPENING?

Check out the latest news on the status of your Enron Corp. Savings Plan account as it moves through the transition from Northern Trust to Hewitt Associates.

Enron and Hewitt are committed to making this period as short as possible so we have established a phone number and a web address that enables you to get current information in a timely manner. Call **(713) 853-9127** to hear updated information or go online.

**www.enron.com/benefits**

Mark this site as one of your "favorites". Stay connected to watch for an earlier access date!

# 2 THE COUNTDOWN HAS BEGUN.

Enron Benefits Service Center
2601 Research Forest Drive
The Woodlands, Texas 77381

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HOUSTON, TX
PERMIT NO. 5086

ENRON

**EnronBenefits...***keeping pace with your lifestyle*

# PENSION RIGHTS CENTER

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**STATEMENT OF KAREN W. FERGUSON**
**PENSION RIGHTS CENTER**
**ON "RETIREMENT INSECURITY: 401(k) CRISIS AT ENRON"**
**BEFORE THE**
**COMMITTEE ON GOVERNMENTAL AFFAIRS**
**U.S. SENATE**
**FEBRUARY 5, 2002**

Mr. Chairman, Members of the Committee, I am Karen Ferguson, Director of the Pension Rights Center, the nation's only consumer organization dedicated solely to protecting and promoting the pension rights of workers, retirees and their families. Accompanying me is Karen Friedman, the Center's Director of Policy Strategies. We thank you for the invitation to testify today.

Over the past 25 years, the Pension Rights Center has taken the lead in targeting inequities in the nation's retirement programs, and proposing realistic solutions. Working with a bipartisan coalition of retiree, labor, and women's groups we have secured the enactment of five federal laws that are providing much-needed benefits to millions of retirees, widows, and divorced spouses. We have also helped thousands of people with their pension problems, and worked with employees and retirees from companies around the country to help stop cutbacks in their pension and retiree health benefits. As you can imagine we have heard our share of tragic stories. But what makes Enron different is the magnitude of the saga, the number of people hurt, and the fact that it so dramatically highlights so many gaps in federal retirement laws that need to be addressed to adequately protect workers.

The story of Enron is unfolding daily. The company created a complex web of seeming improprieties replete with shell companies, sham partnerships and a host of other elaborate schemes devised for the purpose of hiding losses and creating financial statements that misled the workers into thinking that the company was highly profitable. According to excerpts from a special committee investigative report of the Enron Corporation's board detailed in this past Sunday's *New York Times*, "There was a culture of deception where every effort was made to manipulate the rules and disguise the truth as part of an effort by executives to falsely pump up earnings and earn millions of dollars for themselves in the process."

Millions of individual stockholders, investors in mutual funds, and participants in state retirement funds have been affected by Enron's demise. But no one has lost more than the Enron employees, who have lost their jobs, their confidence in the stock market, and most (or all) of their 401(k) money.

Enron workers thought of the company as family. They had put their life savings into their 401(k) plan because they trusted reports by Enron CEO Kenneth Lay and other company officials that the stock was soaring and the company was in stronger shape than ever. But while they were putting money into the 401(k), the company officials were selling Enron stock, presumably because they knew the company was in serious financial trouble. To make matters worse, even if they had known the facts, the portion of company stock they had received as "matches" to their 401(k) contributions was locked in until they reached age 50. Then, when the stock price continued to drop, they learned that they could not even shift their own contributions out of company stock because of a "blackout" imposed while the plan changed administrators. Through all of this the company had the audacity to tell employees not to worry because, "The Enron savings plan is an investment vehicle for long-term financial goals."

We now know that the only ones who planned to benefit in the "long-term" were company officials.

In the aftermath of the Enron tragedy, the Pension Rights Center has been inundated with calls and letters from reporters, policymakers and ordinary citizens who ask us, "What does this mean? Is retirement money safe? What can be done to prevent future Enrons? .

What is clear is that strong measures are needed to restore confidence in private retirement plans. Just as Studebaker's bankruptcy in the 1960s prompted Congress to pass the Employee Retirement Income Security Act (ERISA) in 1974, Enron's failure may be the catalyst needed to close the serious gaps in the law that this terrible tragedy has highlighted.

We are here today to suggest protections that will help assure that people's retirement money is safe. We will focus on measures to ensure that Enron-type situations cannot occur again, as well as on ways of making sure that individuals who have been harmed in such cases will be made whole. The Enron situation also raises broader issues, such as whether there is an over-reliance on 401(k) plans and other uninsured savings plans, and whether the shift to these do-it-yourself savings plans represents sound policy. I will address those issues at the conclusion of our statement.

**Preventing Future Enrons.** What needs to be done to ensure that the kinds of losses experienced by Enron employees cannot happen again?

First and foremost there must be strong measures to ensure proper diversification of investments within 401(k) plans. If an employer makes matching contributions in the form of its own company's stock (rather than cash), employees should be able to move out of that stock and into other 401(k) investments within a reasonable amount of time. The Boxer-Corzine bill, S. 1838, the Pension Protection and Diversification Act, would allow such a shift after 90 days, once an employee is "vested" in the matching contributions. (Vesting normally occurs after three years of work.) Last week, the Bush Administration proposed that employees be able to move out of company matching stock after three years of work without a 90 day waiting period. These are important first-step measures, but to make these reforms stick, Congress must ensure that companies cannot circumvent these provisions by simply setting up Employee Stock Ownership Plans (ESOPs), plans funded entirely (or primarily) by employer contributions of company stock. It has become too easy for employers to set up what are called, "KSOPS," combinations of 401(k) plans and ESOPS.[1]

Employer groups take the position that if employees are allowed to freely shift out of company stock and into other plan investments, employers will stop matching their employees' 401(k) contributions.[2] This is unlikely since, as the Congressional Research Service recently pointed out, there are a variety of incentives to encourage employers to make matching contributions in stock.[3]

But allowing employees to move out of company stock that used as a match for employee contributions is only one part of the diversification problem. That is because employer matching contributions typically make up a relatively small part of the company stock held by 401(k)s. (In the case of Enron's 401(k), 11 percent of the company stock was attributable to employer matches.) There is also a need to limit the amount of employees' own 401(k) contributions that can be invested in company stock.

The simplest approach would be simply to apply the same limit 10 percent limit now imposed on traditional pension plans (and on 401(k)s where employers direct plan investments). After all, if this kind of diversification is required when employers (and the government) bear the risk of loss, why should less diversification be required when employees bear the risk? The Boxer-Corzine bill would apply a higher limit: Employees would be permitted to put up to 20 percent of their 401(k) assets in company stock. Another approach that has been suggested would be give employers the choice of either using company stock as a match, or offer it as an option for employee contributions.[4]

[1] The Boxer-Corzine provision would allow participants in ESOPs to switch into other investments earlier than is now permitted. (At age 35 and 5 years of service, rather than the current, age 55 and 10 years of service.) An in-depth examination of ESOPs from a workers' perspective is urgently needed. Once rare, these plans, which Yale Law Professor John Langbein recently described to this Committee as "tools of corporate finance masquerading as pension plans," are increasingly substituting for other, more diversified retirement plans. Statement of Professor John H. Langbein, January 24, 2002

[2] They make the same argument in opposition to another proposal in the Boxer-Corzine legislation that would reduce the tax deduction given to company stock contributed by employers from 100 percent to 50 percent, to reflect the fact that stock contributions are considerably less valuable to employees than cash contributions, and to encourage companies to contribute cash rather than stock.

[3] "Contributions of company stock are preferred over cash contributions by some employers because (1) they do not affect the company's cash flow; (2) are not recorded as an expense on the company's income statement, so they do not reduce reported profits; and (3) are fully deductible for tax purposes at the share price in effect when they were contributed. Making contributions of stock also puts sshares into the hands of a group of people – the firm's employees – who are less likely to sell their shres either when there is a hostile tender offer for the company or when the firm's reported profits are less than expected." Patrick J. Purcell, "The Enron Bankruptcy and Employer Stock in Retirement Plans, January 22, 2002, pp CRS-4 – CRS-5. Matches generally are needed to attract top-level employees. They also help encourage more lower-paid employees to contribute to the plan, which increases the amounts that higher-paid employees can contribute under the Internal Revenue Code's "nondiscrimination" rules..

[4] It would also be possible to permit employees to have higher concentrations of company stock in their 401(k)s if they were also participants in other diversified plans, but this would be extremely complex to administer, and, as happened at Enron, the benefits provided by the other plans could be insufficient to provide sufficient retirement security in the event of a company bankruptcy.

We have heard the argument that employees will balk against any restrictions on how much company stock they can invest in 401(k) plans – that they will view such limits as restrictions on "personal choice." In fact, limits of this kind would not restrict personal choice. Individuals are free to invest their personal money any way they wish. Congress has given contributions to 401(k)s special tax treatment in order to help them provide for a secure retirement. The revenue loss to the Treasury resulting from the tax subsidy for employer-sponsored retirement plans this year amounts to nearly $90 billion, the largest of all of the federal tax expenditures.[5] There is simply no justification for all taxpayers to pay higher taxes (or receive less in government services) to subsidize what is universally acknowledged to be highly risky investment strategies.[6]

There are other types of structural reforms that might help prevent future Enrons. These include measures aimed at avoiding conflicts of interest, such as those present in the Enron situation, and encouraging employees who suspect wrong doing to communicate their concerns to the government and others who may be in a position to protect employees.

For example, one long-overdue reform would be to ensure that the 401(k) plan's accountant is free to serve a watchdog function by being independent of the company, as contemplated by Congress in 1974. This would simply require overturning an Interpretive Bulletin issued by the Labor Department in 1975 that permits the accountant for the company to also be the plan's accountant. It would also be possible to require the appointment of an independent fiduciary to protect against conflicts of interest in 401(k) and other plans holding company stock. Another reform would be to set up a "bounty" program to reward whistleblowers who provide information to the Labor Department about unlawful actions by plan officials. Just as important, would be to strengthen legal protections for people who blow the whistle, and are punished by their companies for their efforts.[7]

Finally, the deterrents against unlawful behavior should be increased by allowing the government to recover punitive damages in civil actions when people involved in the running of a plan deliberately defraud employees, and increasing the criminal penalties. Under current law, in civil actions the most that is likely to happen is that a court will tell the wrongdoers to put the money lost by participants back into the plan. Plan fiduciaries convicted of criminal activities can be sentenced to up to five years in prison or fined, or both.[8]

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[5] This subsidy, which includes the revenue loss resulting from public and private retirement plans other than Social Security (including Keogh plans) is larger than that provided for home mortgage interest and employer health insurance deductions. Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2001-2005* Prepared for the Committee on Ways and Means and the Committee on Finance, April 6, 2001, p. 22.

[6] Financial planners routinely counsel clients against holding more than five percent of a single stock. When the stock is the in the company the employee works for, the risk of loss is compounded by the possibility that the employee may also lose his or her job.

[7] A bounty program currently administered by the Internal Revenue Service provides 10 percent of any recovery to individuals providing information about party-in-interest transactions which leads to the imposition of excise taxes.

[8] 18 U.S. Code Section 664.

**Making Employees Whole.**

The Enron employees are fortunate in having been able to find able lawyers to sue the company officials that ran their 401(k) plan, and to have the help of congressional committees and the media in ferreting out the officials' unlawful actions. But there is a very real danger that they will not be made whole for their losses because of short-comings in the laws.

If the people who ran the 401(k), the "plan fiduciaries," knew that the stock was plummeting while encouraging employees to load up on that stock, a court is very likely to find that they have violated their legal obligations to act solely in the interests of plan members, and to hold them personally liable to pay money back into the plan. But there is no requirement that they be insured. In Enron's case, there is a "fiduciary insurance" policy estimated to be about $85 million. But the Enron employees lost almost $1.3 billion – more than ten times the amount of the policy. An urgently needed reform measure is a requirement that everyone responsible for running private retirement plans, and investing plan money, be fully insured. Another reform would be to give employees with claims for fraud under a 401(k) plan the same standing in bankruptcy as secured creditors.

Equally important, if employees are to be made whole, the law must be clarified in a number of respects. For example, the law should specify that individuals acting unlawfully be required to restore losses to individual participants, not just to the plan. Similarly, it should make plain that company officials, such as Enron CEO Kenneth Lay, who make misleading statements to employees can be sued (if those misrepresentations cause losses to the employees), even if the officials claim that they had nothing to do with the running of the plan. The law should also make clear that employees can sue accountants, lawyers, actuaries and others who participate in unlawful actions that cause losses to employees. And, finally, courts should be able to award the same kinds of remedies and attorney's fees to employees suing under pension laws that they award under other worker protection laws.

Business lobbyists are claiming that adopting reform measures will lead to "over-regulation" of 401(k) plans, and discourage companies from offering them. In support of their arguments, they trace the decline of traditional pensions to congressional enactment of laws that made those plans fairer and more adequately funded. In fact, it is equally likely that the number of traditional plans declined because of reduction of regulation by administrative agencies, that invited the development of 401(k)s, the "raiding" of plan assets, and the expansion of plans that only benefit executives, so-called "nonqualified" deferred compensation plans. As the Enron investigations continue, it is increasingly apparent that the problem is "under-regulation," not over-regulation.

**Broader Policy Issues.** Although the focus of this hearing is on the losses in the Enron 401(k), it is important to realize that these losses had such a dramatic effect on Enron employees because of other factors. As described by the *Wall Street Journal*, Enron, like so many other companies, had taken advantage of the leeway provided by accounting practices, and lax federal regulation, to cut back on the employees' underlying pension plan.[9] In 1987, Enron froze that plan, which

[9] Ellen E. Schultz and Theo Francis, "Enron Executives' Benefits Kept on Growing As Retirement Plans of Employees Were Cut," January 23, 2002.

provided lifetime, risk-free benefits guaranteed by the federal government, and used its "surplus" assets to create a "floor offset" plan that effectively relied on company stock to provide benefits. Nine years later, that plan, in turn, was replaced by a barebones new type of pension plan (that cut the expected benefits of older employees), supplemented by the 401(k). All of these changes were highly technical maneuvers that, by dramatically reducing the company's pension liabilities thanks to an accounting rule, permitted it to show millions of dollars of increased "operating income" its corporate financial statements– thus boosting the profits reported to investors, and the value of executive stock options.

Of particular interest to this Committee may be the fact that, even if the employees had been aware of how they were being short-changed – and why – there would have been nowhere within the Executive Branch of the government for them to go. That is because there is no advocate within the Executive Branch to represent the interests of employees with pension policy concerns. There is no ombuds-type office charged with identifying gaps in the laws, or developing policies to close those gaps. There is also no one to speak for employees in interagency deliberations or to present their views to Congress. In this all-important respect, ERISA differs from other worker, consumer, and investor protection laws. We hope you share our view that now, 28 years after the enactment of the law, the time has come to create such an office.[10]

As far as we know, the Enron employees, like others around the country, did not protest the changes in their retirement plans in 1987 and 1996. The shift away from traditional pensions to 401(k)s and other savings plans has been very popular. It has been encouraged by Congress and the Administration, and heavily marketed by financial institutions and the financial media. Employers have welcomed the tremendous cost savings resulting from the shift, and employees have enthusiastically embraced the concept that they could become 401(k) millionaires. Little attention has been paid to the transfer of responsibility from employers to employees, or to the transfer of risk from pooled, professionally run arrangements backed by the government, to uninsured individual account arrangements, invested by ordinary workers who often, regardless of how much financial education they are offered, simply do not have the time, inclination, or expertise to enable them to make the "right" investment choices.[11]

We are concerned that just as Enron was a victim of its own hype, 401(k)s may be equally vulnerable. For years, the Pension Rights Center has taken the position while that 401(k) plans are a good supplement to other plans, they are lacking as a stand-alone arrangement. Yet

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[10] A bill to create such an office was introduced by Senator Tom Harkin in the last Congress. The Pension Participant Advocacy Act of 2000, S.6475, was modeled on a similar type of office of Advocacy at the Small Business Administration, the National Taxpayer Advocate at the Internal Revenue Service and the Labor Department's Women's Bureau.

[11] In this connection it is important to note that the "investment advice" bill mentioned by President Bush as part of his Enron-related proposals, the Retirement Security Advice Act of 2001 (H.R. 2269), would do nothing to prevent future Enrons, and would, instead, create the potential for new kinds of conflicts of interest that could harm 401(k) participants. A far sounder approach to dealing with the non-Enron problem addressed by that bill is the Bingaman-Collins Independent Investment Advice Act, S. 1677.

currently one-half of 401(k) participants have the 401(k) as their only private retirement plan, and half of all 401(k) participants have less than $20,000 in their accounts. Add to that the recent fluctuations in the market, and the uncertainty of the economy, and there could be even greater cause for concern. We believe this is a great opportunity to have a far-reaching debate on whether our nation's private retirement policies are going in the right direction.

Last year, the Center convened an inclusive, bipartisan public policy forum called the Conversation on Coverage. Funded by the Ford Foundation and the W.K. Kellogg Foundation, the Conversation brought together a diverse array of voices – business, labor, consumer, retirees and women's organization – to launch a national dialogue on ways of increasing coverage for the 50 percent of the population without any kind of pension or savings plan. We now have a unique opportunity to expand the scope of the Conversation, and reexamine these issues in light of Enron. The Conversation's goal will be to develop plans that are in the best interests of employees and employers – looking at ways of combining the best features of traditional pensions plans – insured, lifetime payments – with the portability and ease of 401(k) plans. We invite Members of this Committee to join us in the Conversation.[12]

We would be pleased to answer any questions you may have about this statement.

[12] Additional information about the Conversation can be found at www.pensioncoverage.net.

# Testimony of James A. Klein
## President, American Benefits Council

Good morning, Mr. Chairman, members of the Committee, and thank you for the opportunity to appear this morning. I am James Klein and I am here on behalf of the American Benefits Council, which is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement, stock and health plans covering more than 100 million Americans.

We at the Council are pleased that this Committee is pursuing a full investigation of the Enron collapse before determining what policy changes may be appropriate. Based on the facts as they are currently known, many of the failures at Enron appear to be general corporate failures rather than specific 401(k) failures. Given this reality, the Council believes strongly that a deliberate and cautious review is absolutely necessary in order to avoid hasty legislative changes that could undermine our nation's successful employer-sponsored retirement savings system. We salute the Committee for its judicious approach to the retirement policy aspects of the Enron bankruptcy.

More than 42 million Americans today participate in 401(k) plans and 14 million more participate in profit-sharing and employee stock ownership plans (ESOPs). These 56 million workers have amassed more than $2.5 trillion in retirement savings and many have built a substantial ownership stake in their company. These successful employer-sponsored plans not only prepare workers for retirement and democratize corporate ownership, but also serve as an engine of economic growth by providing one of our nation's most significant sources of investment capital. Congress has, over many decades, promoted these retirement savings and employee ownership plans through tax and other incentives, with very positive results for tens of millions of American workers.

As Congress turns to an evaluation of the appropriate response to the Enron bankruptcy, we urge you to keep the private retirement system's success squarely in mind and to hold true to the long congressional support for our nation's voluntary, employer-sponsored retirement savings and employee ownership system. We do not believe that the unfortunate developments at Enron merit a retreat from the long-standing bipartisan policy of extending corporate ownership into the hands of rank-and-file workers.

In order not to undermine this successful, voluntary system, the Council believes that Congress should focus any retirement plan reforms on ensuring that 401(k) participants have the information, education and professional advice they need to wisely exercise their investment responsibility. To this end, we support the proposals made recently by the Bush Administration and some in Congress to provide advance notice to employees of transaction suspension periods (so-called "blackout" periods) as well as more regular retirement plan benefit statements that stress the importance of diversification. The Council likewise supports proposals to help employers offer professional investment advice to 401(k) participants and help employees save for the cost of retirement planning services.

We do, however, strongly urge Congress to reject percentage caps on the amount of an employee's 401(k) account that could be invested in company stock. These caps, which are included in legislation put forward by Senators Boxer and Corzine (S. 1838), would be unpopular -- and contrary to the best interests of -- the many employees who benefit from having an ownership stake in their company. Rather than limiting employee opportunity in this way, we believe Congress should empower workers to exercise their freedom of choice wisely through provision of the new educational tools discussed above.

Percentage caps would also prevent employers from continuing to provide 401(k) matching contributions in stock. Unable to achieve their purpose of providing an ownership stake to employees via the stock match -- and given the greater expense of matching in cash -- many employers will respond to caps by reducing their matching contributions. The unfortunate result will be <u>fewer</u> employer match dollars contributed to employee accounts. This will weaken one of the most effective incentives for employee saving and inadvertently harm the very people Congress wishes to protect.

These same concerns inform the Council's skepticism about limiting the holding periods that employers may impose on the sale of shares provided via a 401(k) match. We believe that limiting these holding periods risks reduced matching contributions. In particular, such changes may lead employers to divert resources from 401(k) programs into broad-based stock option programs, where the company can guarantee that employees will maintain an ownership stake. The earlier in a worker's career that he or she is permitted to sell company shares and the greater the percentage of shares the employee may sell, the greater the risk of reduced employer matching contributions.

The losses suffered by Enron 401(k) participants have renewed interest in defined benefit pension plans. These plans, which are funded by the employer and insured by the federal government, make an effective complement to a 401(k) program. Yet the number of these plans has declined from a high of 175,000 in 1983 to fewer than 50,000 today, with the decline partly attributable to over-regulation and its attendant costs and complexities. These sobering numbers offer two important lessons. First, Congress must approach any new regulation of 401(k) plans with extreme caution so as not to produce the same disastrous decline in employer sponsorship of 401(k) plans that we have seen in the traditional pension arena. Second, Congress should use the occasion of its Enron review to streamline the rules that apply to defined benefit pensions so that more companies can provide these employer-funded and insured benefits to their workers.

In closing, the Council urges a cautious approach to the retirement plan dimensions of the Enron collapse so as not to undermine our successful and long-supported retirement savings and employee ownership system. Information and advice -- rather than restricted choice and over-regulation -- are the strategies that will protect workers and retirees while fostering the continued growth of the 401(k).

Thank you, Mr. Chairman, for the opportunity to appear today.

TESTIMONY

BEFORE THE

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON

RETIREMENT SECURITY: 401(K) CRISIS AT ENRON

FEBRUARY 5, 2002

WASHINGTON, DC

WITNESS: Erik Olsen
AARP Board Member

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Thank you Mr. Chairman and Members of the Committee for providing me with the opportunity to testify today. My name is Erik Olsen, and I am a member of the Board of Directors of AARP. AARP is the largest organization representing the interests of older persons. Of our 35 million members, about one-third are still working. AARP appreciates the opportunity to present our views and recommendations for policy changes that should be enacted to make retirement plans more secure and to protect the retirement savings of American workers.

**Background**

The financial collapse of the Enron Corporation illustrates weaknesses in our pension laws and the need to update the legal and regulatory framework to reflect changes in pension coverage since the enactment of the Employee Retirement Income Security Act (ERISA) in 1974. ERISA was established in the wake of large corporate failures that left their workers without promised pensions. ERISA established minimum vesting, participation and funding standards, required plan termination insurance for defined benefit plans, prohibited certain transactions, and established standards for fiduciary conduct. These protections were designed to ensure that workers would not lose pensions they had worked for and earned throughout their lifetimes. While we have experienced profound changes in the types of pension coverage – as well as many other aspects of the private retirement system – over the past 25 years, the law has not changed to fully reflect these changes. The collapse of Enron, and the large numbers of employees who have seen their pension accounts dramatically reduced, only amplifies the need for change.

The percentage of the private sector workforce covered by an employer-sponsored pension plan has remained around 50 percent since the early 1970s. While the number of covered workers has remained relatively unchanged, there has been a substantial shift in the type of coverage from defined benefit to defined contribution plans, including an increase in the establishment of defined contribution plans to provide supplemental coverage to employees already participating in defined benefit plans.

While the number of defined benefit pension plans has declined, the number of 401(k) plans has grown dramatically. Section 401(k) of the Internal Revenue Code did not exist in 1974, and plans named for this tax code section did not really began their growth until the early 1980's. In just over two decades, there are now an estimated 350,000 401(k) plans, covering 42 million workers, and holding an estimated $2 trillion in assets. However, for the most part, the basic framework of pension security underlying the nation's pension system has not been updated to reflect these trends and developments.

In the traditional defined benefit plan, the employer invests all plan assets, bears the risk of investment, and provides a guaranteed benefit to participants. In addition, the Pension Benefit Guaranty Corporation (PBGC) guarantees payment of benefits should a company go bankrupt with insufficient assets to pay benefits. However, many of the extensive ERISA protections and safeguards originally provided to defined benefit plans simply do not extend to the different structure of 401(k) and other defined contribution plans. For example, in 401(k) and other individually directed account plans, the individual controls the investment allocation and bears the risk of investment loss. The individual must invest well in order to ensure an adequate level of retirement benefits, and there is no PBGC guarantee protection. Unfortunately, millions of workers are simply not prepared to handle this dramatic shift in investment responsibility and risk for their retirement savings.

The sudden and dramatic collapse of Enron has demonstrated that neither ERISA nor any other federal statute provides American workers with the protections or guidance commensurate with the financial risk they are asked to bear in managing their defined contribution plans.

Although Enron's bankruptcy is the largest and most dramatic to date, other companies have experienced major financial troubles resulting in a steep drop in stock price and a corresponding decline in the value of workers' 401(k) accounts. The plight of the employees of Color Tile Corporation captured congressional attention in 1996 when that company filed for bankruptcy. Eighty-five percent of the employees' assets in that company's 401(k) plan were invested in Color Tile real estate. Employees lost most of their retirement savings. However, legislation to address the problem in Color Tile was narrowed significantly during the legislative process, leaving more problems for the future.

While only a small percentage of companies face such dramatic downturns, such downturns are inevitable. For example, the price of a share of Lucent Corporation common stock declined by 91 percent between 1999 and 2001. Some employees, according to news articles, had as much as 80 percent of their Lucent 401(k) plan balances invested in Lucent stock, although the workers were afforded 16 investment options. Another recent example is the Polaroid Corporation, which filed for bankruptcy in October 2001. Approximately 40 percent of the company's 401(k) plan assets were invested in the stock of the company.

Individual account plans such as 401(k) plans have become important components of our private retirement income framework. The phenomenal growth of these plans over the past two decades is a tribute to their success in gaining acceptance among the American population. However, AARP believes it is important that we begin to address some of the problems associated with defined contribution plans, beginning with the systemic problem of the over-concentration of employer stock in those plans that have employer stock as an investment option. In each of the firms noted above, workers' retirement assets were simply not properly diversified. Despite the fact that the single most important rule for investing is diversification, the assets of the 401(k) plans of each of the bankrupt companies -- as well as hundreds of other companies today -- were overly concentrated in the stock (or real property) of the plan sponsor.

The time has come for Congress to enact a better framework for employees in defined contribution plans. Ultimately, this will mean better plan security, and better assurances that our highly tax supported retirement system meets the long-term goal of providing an adequate retirement income. Our testimony today will focus on several areas that warrant immediate Congressional attention and action: disclosure, risk and diversification, investment advice and remedies under the law.

**Disclosure**

Among the allegations concerning Enron is that participants did not receive complete, accurate and timely information concerning their plan and the employer stock in which they invested. The shift of risk and responsibility to employees makes it imperative that employees receive complete, accurate and timely disclosure of information to help them make more informed decisions about their retirement security. This includes defined contribution benefit statements on no less than a quarterly basis, detailing the status of participants' investments and investment activity. Similarly, defined benefit plans should be required to furnish regular benefit statements to participants on an automatic basis, without the current-law requirement that the participant first request the statement.

Employees must also be given prompt and accurate information about their company's financial performance. Employees should not only receive this information on a regular basis, but they should also be affirmatively informed when there is new information or a material change. This information should be required automatically, without requiring employees to request it. Although most courts agree that a failure to provide material information even without an inquiry is a breach of fiduciary duty, the Fifth Circuit (where Enron is located) has called this proposition into question. We believe that any legislation should affirm the position that a majority of courts have taken.

Other improvements in disclosure are needed to help address the problems that are highlighted by the Enron debacle. If a plan intends to implement a temporary suspension, limitation, or "lockdown" of participants' normal ability to exercise control over their plan accounts, it must provide participants with ample advance notice. In addition, the Department of Labor should be directed to facilitate effective disclosure by publishing a model benefit statement that plan administrators could use or adapt. In addition to information on the participant's accrued and vested benefits, the statement would include information on the percentage of the participant's account that is invested in employer stock (and real property), on the importance of diversification, and other information relevant to the employee.

In addition, in order to minimize the risk of errors in determining pension benefits, participants who are ready to receive a distribution of their benefits should have the right to request an explanation of how the benefits were calculated. Such disclosures will help participants to confirm that they are in fact receiving the full benefits to which they are entitled.

**Diversification of Risk**

The Enron, Lucent, Polaroid, and other unfortunate cases illustrate the danger of defined contribution plan participants over-investment in company stock. There is no more basic and fundamental principle of sound investment practice than diversification. That is why few financial planners or investment advisors would recommend investing more than a limited percentage of a client's portfolio in a single stock. This is true even where the portfolio is not the plan on which the individual's retirement security depends, and is especially true when that single stock is also the one on which the individual's job security and wage check depends.

It is hardly surprising, therefore, that ERISA's fiduciary standards, based on the common law of trusts, generally require that retirement assets be invested as a prudent expert would invest them, including diversification "so as to minimize the risk of large losses." ERISA section 404(a)(1). However, when ERISA was enacted in 1974, certain exceptions to the fundamental principle of prudent diversification were included. One exception gives plan sponsors and other fiduciaries a measure of relief from fiduciary responsibility for investments that were self-directed by plan participants in accordance with the statute. Another exception allows employers to design most individual account plans to invest up to 100% of plan assets in the stock or real property of the sponsoring employer.

ERISA recognized employer stock as a plan investment that involves a conflict of interest for the employer. However, the law excused most defined contribution plans from the 10% limit it imposed on pension plan investment in employer stock. This was done as an accommodation to a limited existing practice in the very different pension system that was then in effect. In the early 1970s, well before the advent of the 401(k) plan, defined contribution plan coverage was far more limited than it is today. Defined contribution plans tended to be thought of as supplemental to the basic employer pension protection afforded by traditional defined benefit plans. A large fraction of the defined contribution plans at that time were more highly regulated money purchase pension plans or were profit sharing plans that, in either case, were funded mostly by employer (not employee) contributions. The investment of these employer contributions generally was not directed by the employee. In addition, when ERISA was enacted, retirement plan investment in employer stock was far less prevalent than it later became. Accordingly, the focus of ERISA's regulation of investments was on what was then the main type of plan, the defined benefit pension plan, and on employer contributions the investment of which was directed by the plan sponsor or its designated professional investment managers or advisers.

Much has changed. Over the years, plan sponsors have shifted the responsibility for funding retirement plans increasingly from the employer to the employee through 401(k) salary reduction arrangements, and have concurrently shifted to employees both the investment risk and the responsibility for directing the investment of their accounts. At the same time, to a far greater extent than ERISA's framers imagined, the defined contribution plan system has become heavily invested in employer stock. These trends have converged to result in a very different situation from the one Congress confronted in 1974: millions of workers now rely mainly or heavily on employee-funded defined contribution plans that require employees to direct their own investments and that, in may cases, encourage employees to invest in employer stock. Corporate financing needs, special tax incentives directed to employer stock, management's interest in placing stock in friendly hands, and other factors have skewed the playing field and resulted in the over-concentration of defined contribution plan assets in company stock.

In fact, when it comes to employer stock, the current 401(k) system as a whole fails any broad test of diversification. There are far too many plans in which employees hold large concentrations of company stock. The Profit Sharing/401(k) Council of America found in its recent annual survey that company stock accounted for about 39 percent of all 401(k) plan assets. The level of concentration is highest in plans with 5,000 participants or more. In these plans, company stock accounts for 40 percent or more of plan assets, and data published by the Employee Benefit Research Institute suggest that heavy investment in company stock is more prevalent among lower-income workers.

In particular, it is this combination of trends – toward 401(k) plans fueled largely by employee contributions, increasing self-direction of investments by employees, and the rise of specially tax-preferred employer stock as an investment choice heavily favored by the system and by employers – that was least foreseen by the framers of ERISA. Thus the focus of ERISA's fiduciary protections relating to employer stock was limited to the prevalent type of plan, the defined benefit pension plan (and money purchase pension plans). ERISA currently prohibits these plans from investing more than 10% of plan assets in the employer's stock or real estate. This diversification requirement limits the risk to the funded status of the plan in the event of a catastrophic drop in the value of the plan sponsor's stock.

Currently, 401(k) plans, other profit sharing and stock bonus plans, and employee stock ownership plans (ESOPs) acquire company stock in two ways: (1) through employer contributions, including those employer contributions that match employee contributions, and (2) through the investment of employee contributions on a pretax (401(k)) or, less frequently, an after-tax basis. Current law allows a plan sponsor to compel employees to invest up to 10 percent of their employee contributions in employer stock as a condition of participating in a 401(k) plan. Many plans also restrict the ability of participants to shift employer contributions from company stock into other investments offered by the plan until the participant reaches a specified age (such as 50 or 55) or years-of-service milestone. These barriers to prudent diversification of both employer and employee contributions should be removed in order to protect employees from excessive risk of losing their retirement savings in circumstances that tend to threaten their job security as well. Participants must have the right to reduce their exposure to employer stock in the interest of diversification.

The need for diversification rights extends to ESOPs as well as other plans. Although ESOPs are designed to be primarily invested in employer securities, they are required under current law to provide participants limited rights to diversify employer shares in their accounts. But those rights are too restrictive. Unless the plan sponsor chooses to grant more generous rights, ESOP diversification rights apply only to participants who are at least age 55 and have at least ten years of participation in the plan, lasts only for a period of six years, and apply each year only to a portion of the shares in the individual's account. ESOPs have expanded and evolved far beyond their traditional forms and have acquired an array of valuable tax incentives. Instead of receiving an ESOP only as a supplement to one or more retirement plans, however, employees in many companies are now expected to rely on an ESOP for a major portion of their employer-provided retirement savings. In many corporate settings, the ESOP has been presented as the main or only retirement plan. Accordingly, it is long past time to revisit and broaden the minimum standards for ESOP diversification.

Both the diversification rights for employees in defined contribution plans generally and the expansion of current-law diversification rights in ESOPs need to be designed in a manner that takes into account the voluntary nature of our private retirement system. Legislative changes must be sensitive to the potential impact on employer incentives to continue maintaining these plans and to make employer matching and nonmatching contributions.

While rights to diversify out of employer stock investments are important and necessary, they are not sufficient to protect workers. As evidenced by the high concentration of employer stock in 401(k) plans, our pension system and corporate culture have tax incentives and behavioral tendencies that in effect have "stacked the deck" in favor of heavy investment in employer stock. This is true even when employees are free to choose.

Enron is a case in point. It appears that most Enron 401(k) participants were free to sell most of their Enron shares during most of the decline in the share price. According to press reports, the Enron plan restrictions on diversification by employees under age 50 applied only to the company shares in which employer contributions were invested. The employee contributions, which appear to have accounted for most of the assets in most of the accounts, were free to be diversified. Thus Enron 401(k) plan participants reportedly were technically free to diversify a majority of their Enron shares, except during the temporary "lockdown" period.

Clearly, there have been well-publicized reasons to believe that employees' voluntary retention of Enron shares might have been exacerbated by special circumstances – including allegedly misleading information and inadequate disclosures – that would not be expected to occur in most other companies. But there are many other instances where many or most plan participants who are not precluded from diversifying have in fact remained over-concentrated in their employers' stock in the absence of any apparent corporate misinformation or misconduct. The reasons employees tend to over-concentrate in company stock have to do with both tax advantages and less tangible factors.

First, the tax rules encourage plan participants to invest in employer stock because employees generally receive special preferential tax treatment when they take distributions of employer stock from a qualified plan. (Provided that certain conditions are satisfied, the "net unrealized appreciation" of employer stock while held by the plan – the gain from the time the plan acquired the shares until it distributed them – is taxed at favorable long-term capital gain rates, deferred until the stock is disposed of by the distributee.) Second, and more important, many employers have powerful tax incentives to encourage heavy employee plan investment in employer stock, even when inconsistent with prudent diversification of retirement savings. Plan sponsors can obtain a number of valuable tax incentives if they label the plan (including a 401(k) plan) – or a portion of the plan – an ESOP and meet the conditions of ESOP status. It appears that most defined contribution plan sponsors that are seriously interested in converting the plan's employer contribution to an ESOP are able to do so, where the relevant portion of the plan is primarily invested in employer stock.

One key tax incentive for ESOPs is the dividend deduction under section 404(k) of the Internal Revenue Code. While a corporation ordinarily cannot claim a federal income tax deduction for dividends it pays on its stock, dividends are deductible when paid on employer stock held in an ESOP (provided that the treatment of the dividends satisfies certain conditions, which were recently liberalized in last year's tax cut legislation). This dividend deduction can generate very substantial tax savings to the employer. In addition, employers that sponsor ESOPs can claim a number of other special tax incentives beyond the valuable tax benefits normally accorded qualified retirement plans, including special provisions for "leveraged" ESOPs that can make corporate financing easier or more advantageous and higher tax deductions for employer contributions to their plans, among others.

Finally, both employers and employees have powerful non-tax incentives that tend to lead to over-concentration of plan investments in employer stock. There is, of course, the effect of simple inertia: many employees who have full investment choice do not devote adequate attention or analysis to their plan investment strategy. If the employer contributes stock, many employees may not take the initiative to change the investment.

Building on this phenomenon, there is evidence suggesting that employees often tend to follow the employer's lead with respect to investment in employer stock (as well as other investments) by interpreting the employer's decision to contribute company stock to the plan as an implicit endorsement by the company of its stock as a wise investment choice for a large portion of employees' account balances. Employees may also feel that loyalty to the company demands or suggests that they invest their retirement accounts heavily in employer shares (or may feel that this is the company's view of what loyalty demands). And loyalty aside, some employees may feel more comfortable investing in the one company they know best rather than in other businesses, believing that their company is a safe investment compared with the unknown risk of a diversified stock portfolio. These decisions ignore, of course, the imprudence of compounding retirement savings risk with job security risk.

Employers also may prefer to contribute stock to the plan instead of cash because, while each type of contribution is tax deductible, only the stock contribution is costless in terms of cash flow. Employers' motives for encouraging heavy plan investment in employer stock also include, in some instances, a desire to place a substantial number of shares in friendly hands for defense against hostile takeovers or proxy contests (or perhaps in the hope that plan participants will tend to be slower than other shareholders to sell in a falling market). In addition, the employer may believe that employees who hold substantial quantities of employer stock will tend to identify more closely with the goals of management and shareholders, to be more loyal to the company, and to be more productive workers. Indeed, consistent with fair and accurate disclosure and compliance with all applicable laws, management has every reason to encourage the work force at all levels to believe in the company and to have confidence in its future. But the measures necessary to motivate employees may also encourage employee exuberance or optimism regarding the company's stock that could further explain the imprudent over-concentration in that investment.

Some of these motives, together with the tax incentives for maximizing plan investment in employer stock, exacerbate management's conflict between its fiduciary duties to the company's shareholders and its fiduciary duties to the plan participants. Because of these realities, many employees who have the right to diversify do not do so, even if they receive adequate information and advice regarding the importance of investment diversification. The playing field between employer stock and more diversified investments is not level. That being the case, the question is whether the law should incorporate measures to affirmatively lead to greater diversification. We believe it should.

There is a legitimate and substantial public policy interest in ensuring that the assets of ERISA-governed, trusteed, tax-qualified retirement plans are invested in a prudent, diversified manner, so as to minimize the risk that the tax advantages accorded to those assets will fail to achieve their intended purpose of providing additional economic security in retirement. The tax expenditure for qualified plans is the largest single federal tax expenditure. The tax system subsidizes qualified employer-sponsored retirement plans in an amount estimated to exceed $90 billion a year. See Joint Committee on Taxation, Estimates of Federal Tax Expenditures for Fiscal Years 2002-2006, JCS-1-02 (Jan. 17, 2002). The high tax subsidy for the pension system is for the purpose of providing adequate savings for retirement. It is therefore appropriate for the law to include measures that will achieve this purpose. In the case of personal, non-plan funds, individuals are free to invest in any way they choose. But the law should provide for the assets of trusteed, tax-qualified retirement plans to be invested in a prudent, diversified manner, in order to accomplish their intended purposes.

We believe that any approach to reducing the excessive concentration of plan investments in company stock should be appropriately sensitive to the voluntary nature of our private pension system. Workers' retirement security should be protected while seeking to minimize any disincentive for the employer to contribute to the plan. One way to achieve this may be to afford plan sponsors choices by which to achieve the public policy goal of protecting participants from the financial risk associated with high concentrations in employer stock.

Some have proposed placing caps or percentage limits on the amount of company stock a plan participant can hold in a 401(k) account. Others have recommended prohibiting a plan sponsor from using company stock to make matching contributions to the plan. We agree with the ultimate goal of these proposals – that of improving diversification by reducing the over-concentration of stock in the hands of employees. We believe, however, that there are other approaches. We believe a preferable approach should avoid placing a disincentive on the employer's own contributions to their employees, while at the same time recognizing that the combination of employer-provided stock and employee elective purchases of company stock are what ultimately create such high concentrations. In fact, studies show that where an employer provides stock as a matching contribution, employees are even more likely to elect employer stock as an investment option with their own elective contributions.

One option that would increase diversification without providing a disincentive to the employer is to provide the employer with the choice: the employer can continue to make matching or non-matching contributions in stock, or the employer can include employer stock as an option for employee elective deferrals in the plan. Under this approach, we can continue to allow employers – without limit – to make matching or non-matching contributions with company stock. However, in such cases, the employer would not be permitted to provide company stock as an investment option for elective contributions. Where the employer did not provide stock directly to the employees, the employer could continue to offer employer stock as an investment option in the plan. This approach would result in a greater degree of diversification over time without discouraging businesses from establishing new plans or contributing employer stock directly to employees. This approach is also consistent with employees' ability to self-direct their investments among the limited menu of investment options that employers provide under the plan.

**Investment Advice and Education**

Most 401(k) plan participants have little experience in, or understanding of, investment fundamentals. While almost half of all households now have some money in equities or mutual funds – up over 50 percent in the past decade – many of these are new investors. In addition, many have no other investments aside from their retirement plan. This is particularly true for those households below the median income, who are far less likely to have any money in an equity fund. Even for those who have entered the investment marketplace, too few have the time, or have taken the time, to learn the basics of investing.

A recent survey conducted for AARP ("Consumer Behavior, Experience and Attitudes: A Comparison By Age Groups," conducted by Princeton Survey Research Associates, March 1999) sought to provide a snapshot of the public's basic investment knowledge by asking four questions:

- Whether the FDIC covers losses from mutual funds purchased at banks,
- Whether no-load mutual funds involve sales charges or other fees,
- Whether diversification increases or decreases the risk of the investments, and

- Whether full-service brokers and financial planners are compensated on the quality of their advice or on the amount and type of investments they sell to clients?

The unfortunate findings are that not many Americans are knowledgeable about financial investments. Only 11 percent of respondents answered all questions correctly, while only 25 percent correctly answered three of four and less than half (46 percent) answered two questions correctly. Perhaps most significantly for the issues at stake today, just over one-third could correctly answer whether diversification reduces risk.

Lack of information is not necessarily the problem; the amount of financial information available today is greater than ever before. Magazines, newspapers, daily financial news programs, on-line services, and various types of software make available more information than most individuals could want or need. In addition, the plan itself often makes available many different forms of information, including videos, seminars and booklets on plan options and hypothetical investment portfolios. What the individual investor often lacks, however, is the ability to sort through the information. As noted, too many investors or would-be investors lack both the time and the knowledge to determine which information is important, accurate and appropriate for their own individual situation. These issues are especially true in the case of self-directed plans.

The Department of Labor, through Interpretive Bulletin 96-1, provided a helpful step by encouraging greater investment education for plan participants. The guidance provides examples of "safe harbors," -- such as asset allocation models based on hypothetical individuals with different time horizons and risk profiles -- that do not rise to the level of specific advice and thus do not trigger fiduciary liability under ERISA. These asset allocation examples and model portfolios, permissible under current law, already provide individuals who take the time to sift through the information with a good roadmap to the investment alternatives under their plan.

However, this information continues to be insufficient, and often still too complex, for many participants. Many participants simply want to be told more specifically where to invest their plan funds. As a result, some employers and plan service providers have sought to provide more specific and individualized investment advice to plan participants. AARP agrees that such individualized advice can be helpful, but such advice must be subject to ERISA's fiduciary rules, based on sound investment principles, and protected from conflicts of interest.

ERISA Rightly Prohibits Advice Subject to Conflict of Interest

Participants deserve to have access to quality investment advice, and that advice should be free from financial conflicts of interest. ERISA has long recognized that financial conflicts of interest give rise to divided loyalties, and thus pose the risk that actions will not be taken in the sole interest of plan participants. Advice providers who also stand to benefit financially depending on the type of advice that is given face just such a conflict.

Preserving ERISA's ban on such conflict of interest transactions is necessary to ensure that the advice provider is acting for the "exclusive benefit" of plan participants.

The *Retirement Security Advice Act, H.R. 2269,* passed by the House last year, would replace ERISA's prohibition on such conflicts of interest with a disclosure requirement, and would allow investment advice where a conflict exists so long as such conflicts are disclosed. AARP believes disclosure alone is not sufficient protection, nor is it the best approach in today's marketplace.

As noted, too many participants are already overwhelmed with the investment information they are currently receiving. Disclosing yet more information, which the individual would have to both understand and properly weigh, will be least helpful to the unsophisticated investor. Even with the disclosure of potential conflicts, the participant is not left with much real choice. The individual either chooses to accept advice that is subject to a conflict, or the individual can choose no advice at all. Providing pension participants with qualified advice is simply not the best approach.

In fact, the Committee on Compensation Practices – also known as the "Tully Commission" (named for its Chairman, Daniel Tully of Merrill Lynch) – which was formed by the SEC to review conflicts of interest in the brokerage industry, reported in 1995 that "the prevailing commission-based compensation system inevitably leads to conflicts of interest among the parties involved." The report further stated that "…conflicts of interest persist and have been underscored by some widely publicized incidents in which the actions of certain brokerage firms and their representatives clearly damaged the interests of their clients." This is not to suggest that all advice that may entail conflict is inevitably bad advice. However, such advice, given by an advisor with a financial stake in the recommended product, needlessly subjects that advice to potential bias and interests other than the sole interest of the participant. In addition, participants must understand and weigh yet another factor in determining whether to follow that investment advice.

Congress held hearings last year on yet another example of the problematic influence of conflict in the financial markets. The hearings followed on the heels of press coverage of the conflicts in Wall Street firms between analysts' ratings on companies and the firms' own financial interests in promoting their investment banking business. Indeed, despite the recent market downturn from an over-inflated market, only one percent of analysts' reports had "sell" ratings. In fact, one study concluded that "the recommendations by underwriter analysts show significant evidence of bias." The New York Times noted the need for regulations to "protect investors from conflicted advice that undermines the integrity of the nation's financial markets."

ERISA Permits Independent Advice

If advice subject to conflict were the only avenue available, then such an alternative would deserve greater attention. However, plans currently have other options to provide investment advice. Financial institutions and other firms may provide advice to participants on products in which they do not have a financial interest, and plans may choose to make such advice available. In fact, a recent 401(k) benchmarking survey indicated that the number of firms using Web-based investment advice is growing rapidly. The survey indicates the service is now available to about one out of every five plans. In addition, the number of large financial service providers who have developed alliances with an independent investment advisor is also growing, and most of the large 401(k) providers now have an independent investment advisor available. (The use of independent advisors is not the only available alternative under current law. In addition, the Department of Labor may grant exemptive relief, as it has done in some instances, provided that certain conditions are included to protect plan participants.)

In light of these other alternatives, it is premature to weaken ERISA's longstanding conflict of interest rules that have served both participants and pension plans well. As we have noted, the application of individualized investment advice to plan participants is in its early stages. As a result, Congress should first encourage the growth of and greater competition among independent and non-conflicted advice providers. Indeed, Congress can further encourage employers to provide such advice by clarifying that the employer would not be liable for specific investment advice so long as the employer undertook due diligence in selecting and monitoring the advice provider. A recently introduced bipartisan Senate bill, S. 1677, takes just that approach.

In Interpretive Bulletin 96-1, the Department of Labor indicated that the designation of an investment advisor to plan participants would not, in and of itself, give rise to fiduciary liability that is the result of the individual's exercise of control. However, as with any service provider, the plan fiduciary would be responsible for the prudent selection and periodic monitoring of the advisor. Currently, the rules applicable to an advisor should be similar to that of any plan service provider. The Department of Labor has indicated the plan fiduciary must engage in an objective process to obtain information to adequately assess the qualifications of the provider, the quality of the services offered, and the reasonableness of the fees. In addition the Department has indicated such process should avoid self-dealing, conflicts of interest, or other improper influence.

The Department has stated that as applied to the selection of an investment advisor, a fiduciary should take into account the qualifications of the advisor, including registration under any applicable federal and state securities laws, the extent to which the advisor acknowledges its fiduciary status under ERISA to participants, and the extent to which the advisor can provide informed, unbiased, and appropriate investment advice to participants. An employer would also be required to periodically review the performance and qualifications of the advisor, including any comments or complaints about the services.

AARP believes we should encourage employers to provide advice under these basic fiduciary standards, and thus permit employers to offer investment advice without significant risk of liability. Encouraging independent unbiased investment advice will better enable employees to improve their long-term retirement security while minimizing the potential for employee dissatisfaction and possible litigation. We believe it is in the best interest of both the plan and plan participants to pursue these avenues prior to carving out an exemption to one of ERISA's basic prohibitions and opening the door to the potential for conflicted advice.

**Remedies**

Another glaring problem of the ERISA framework is the inability of employees to properly enforce their pension rights to make whole their losses as a result of wrongdoing. Under the current federal pension law, employees have limited, if any, remedies to make whole their losses for any fiduciary violations by their employer and for the improper actions of other parties involved in these violations. As a result, there can also be no deterrent message sent to other violators.

Current law permits individuals to sue fiduciaries for breaches of fiduciary duty under two sections of ERISA. Under Section 502(a)(2), a participant may sue for "appropriate relief under section 409." Section 409 provides for relief only to the plan itself for losses caused by or profits made by the fiduciary, and other equitable relief such as removal of the fiduciary. In *Massachusetts Mutual Life Insurance Co. v. Russell*, the Supreme Court held that compensatory and punitive damages were not available under Section 502(a)(2). Accordingly, under Section 502(a)(2), only persons acting as a fiduciary may be sued; and they may be sued only for losses to the plan or profits made by the fiduciary. For example, in Enron, neither Mr. Lay nor Arthur Anderson may be found to be fiduciaries. And, only direct losses caused to the plan as an entity or profits made by the fiduciary based on its actions may be compensated.

Section 502(a)(3) acts as a "catch-all" provision for injunctive or "other appropriate equitable relief." Unlike Section 502(a)(2), Section 502(a)(3) permits individuals to sue for relief. *Varity Corp. v. Howe*, 516 U.S. 489 (1996). And, Section 502(a)(3) may provide for relief against non-fiduciaries (such as Mr. Lay or Arthur Anderson) if they knowingly participate in a breach of fiduciary duty. *Harris Trust & Savings Bank v. Salomon Smith Barney*, 530 U.S. 238 (2000). However, the relief available under section 502(a)(3) is limited to equitable relief. The Supreme Court has narrowly interpreted equitable relief to be limited to the forms of relief that were traditionally available in equity such as restitution, mandamus and injunctions. *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993). In *Great-West Life and Insurance Annuity Co. v. Knudson*, 122 S.Ct. 708 (2002), the Supreme Court recently reaffirmed its interpretation of ERISA that equitable relief does not provide make-whole relief and does not provide monetary relief, unless an individual can trace the property taken from the individual.

Thus, under section 502(a)(3), Enron participants who sue on behalf of themselves may be left with no remedy against Mr. Lay and no remedy against Arthur Anderson because even though the value of the funds dropped enormously, no money was actually stolen from their accounts. The plan participants may have no remedy under ERISA for any deliberately misleading information or other misdeeds because a remedy based on the difference between the value of their Enron stock today and the value of some other investment or series of investments is legal damages, not equitable relief.

This is not a new problem and this is not unique to Enron. Current pension law, as interpreted by the courts, has developed so participants and beneficiaries have rights without remedies, which of course are no rights at all. For example, in *Farr v. U.S. West Communications, Inc.*, 151 F.3d 908 (9th Cir. 1998), the court held that it was a breach of fiduciary duty where the fiduciaries knew that participants would incur potential adverse tax consequences of a benefit election and the fiduciaries consciously decided to withhold that information from the participants. The court held that the participants had no remedy because the amount of additional taxes the participants had to pay due to the conscious failure to disclose this material information was damages -- a legal remedy. Similarly, in *Kerr v. Vatterott and Co.,* 184 F.3d 938 ($8^{th}$ Cir. 1999), the court held that the difference between what the participant could have earned in his 401(k) account and what was actually earned is not equitable relief, but legal damages, and thus not recoverable.

It is ironic, and crying for amendment, that the federal law that was designed to protect the retirement security of participants and beneficiaries may provide no protections at all in a situation like Enron. The pension law has been interpreted to provide fewer protections than many other federal and state laws. Even if there is outright fraud, or you are caught with your hand in the cookie jar, there's no effective way to send a message that wrongdoing is not tolerated with the American public's retirement monies. Given the large numbers of plans in existence today, the Department of Labor simply does not have the resources to do the type of effective job needed for enforcement. It is therefore critical that employees' self-enforcement rights are improved. In fact, it should also be made clear that an employer's failure to disclose material information is a breach of fiduciary duty. Unfortunately, the Department has not taken the position that there is an affirmative duty to disclose material information.

As part of any pension reform effort, it is therefore essential that we allow employees to actually recover losses due to fraud and other violations of the law. Without the tools to protect their own retirement funds, other changes in the law may have little value.

**Conclusion**

In conclusion, we urge Congress to act this year to enact changes that will better protect workers' pensions. The President in his State of the Union address called for "new safeguards for 401(k) and pension plans." He also stated that: "Employees who have worked hard and saved all their lives should not have to risk losing everything if their company fails." AARP agrees and believes we should act now to improve disclosure, improve diversification and reduce risk, and improve remedies for those who are harmed. While the President has already offered a number of useful steps on disclosure and limiting restrictions on diversification, we must go further to address the fundamental problems created by the high concentrations of employer stock in some plans. Only with more comprehensive changes can we ensure greater retirement security for workers in today's pension environment.

STATEMENT

OF

THE SPARK INSTITUTE

**Introduction**

My name is Stephen M. Saxon and I am testifying on behalf of The SPARK Institute. I am a principal in the Washington, D.C. law firm of the Groom Law Group, Chartered, where I work with The SPARK Institute and other clients on ERISA fiduciary issues relating to employee benefit plans.

The SPARK Institute is the legislative and educational arm of SPARK, the Society of Professional Administrators and Recordkeepers. SPARK represents the spectrum of organizations serving the retirement services market, including banks, administrators, insurers, mutual fund complexes and securities dealers. The more than 250 SPARK member institutions currently provide services to more than 95 percent of the defined contribution assets in the United States.

My testimony is intended to provide this Committee with a greater understanding of the law that governs the offering of company stock as an investment in defined contribution plans.

**What are ERISA's Policy Goals?**

Protecting retirement benefits is one of the key objectives of ERISA and federal tax laws governing private pension plans. But it has never been the only one. From the outset, Congress recognized and sought to promote the benefits of expanding employee ownership of America's corporations. Thus, in the case of plans designed to hold company stock, there may be dual objectives.

ERISA has always recognized that the offering of employee benefits to employees is totally voluntary. Thus, another key goal of federal pension policy – achieved principally through tax incentives – is to promote the offering of retirement benefits even while protecting them. The basic decision of whether and in what fashion to offer benefits is a business decision or what we call a "settlor" function. It is not a "fiduciary" decision subject to regulation under ERISA.

Of course, federal law does impose parameters on how an employer may design its plan. Some of these parameters are there to protect benefits, others, such as participation and vesting rules, are designed to promote fairness in dealing with employees, and some rules have other goals such as preventing tax abuses.

**<u>What are the General ERISA Duties?</u>**

ERISA imposes strict rules of conduct on all persons who serve as fiduciaries to employee benefit plans. These include: a duty of loyalty, or, more specifically, a duty to act "solely in the interest" of the plan and its participants and beneficiaries and for the "exclusive purpose" of paying plan benefits and defraying plan expenses; a duty of prudence, which is often referred to as the "prudent expert" standard because it imposes a professional standard of care; a duty to diversify plan assets so as to minimize the risk of large losses; a duty to follow the written terms of the plan; and, finally, a duty not to engage in certain transactions that are prohibited by virtue of defined relationships without regard to their merits.

**<u>What are the Legal Guidelines for Plans' Investments in Company Stock?</u>**

ERISA permits defined contribution plans to be structured to invest in company stock in a variety of ways. First, a plan may invest "primarily" in company stock and, as such, it might qualify for special treatment as an employee stock ownership plan ("ESOP"). Second, a plan, such as a 401(k) plan, may require that some or all employer contributions be made in the form of employer stock. Third, a plan may allow participants voluntarily to invest their own salary deferral contributions in employer stock. A single plan may incorporate more than one of these design elements. For example, a 401(k) plan may provide for employer contributions to be made in the form of company stock and also allow participants to allocate all or a portion of their salary deferrals to a company stock account.

Certain special tax rules apply to ESOPs and other plans that hold employer securities. For example, dividends paid by on company stock held by an ESOP may be deductible by the employer; special deduction limits and contribution limits apply to ESOPs that borrow to acquire company stock ("leveraged ESOPs"); and the distribution of company stock can get favorable tax treatment if made in a lump sum. The tax law does, however, place certain special restrictions on ESOPs. ESOPs must permit participants who have reached age 55 and 10 years of service to diversify a portion of their account, and participants have the right to demand distributions of their accounts be made in company stock

ERISA contains two key exceptions from the general fiduciary rules for plans that are designed to invest in company stock. First, there is an exemption from the ERISA duty to diversify plan assets with respect to investments in company stock. Second, defined benefit plans are limited to holding 10 percent of their assets in company stock, but individual account plans, like 401(k) plans, are exempt from this limitation.

**Who May Be Accountable for Investing in Company stock?**

As I indicated, designing a plan to invest in company stock is not, in the first instance, a fiduciary function subject to ERISA regulation. But, ERISA does regulate the implementation of the plan's terms. The primary obligation for this will frequently fall upon the employer, an investment committee appointed by the employer, or an outside trustee. Other service providers including directed trustees, custodians, recordkeepers, and the like typically do not act as fiduciaries and, as such, generally are not responsible for the offering of company stock.

**<u>How Does a Fiduciary Reconcile Investing in Company Stock with ERISA's General Fiduciary Obligations?</u>**

As I noted, there may be a tension between the ERISA-sanctioned goals of promoting employee stock ownership and the general fiduciary duties under ERISA. On the one hand, a fiduciary has an express duty to adhere to the terms of the plan document which may allow for, or require, investment in company stock, and can be sued for breach of this duty if it does not do so. On the other hand, except for the duty to diversify, the plan's fiduciaries remain subject to ERISA's exclusive purpose and prudence obligations and can also be sued for the failure to satisfy these obligations.

Recently, several courts have considered how to reconcile these two duties. In the case of an ESOP, the Third and Sixth Circuit Courts of Appeal have found that ERISA creates a "presumption" that following the plan terms and investing in company stock is prudent.[1] At least one lower court last year extended this presumption to stock bonus plans. The presumption may be rebutted by showing that continuing to invest in, or to hold, company stock was an abuse of discretion.

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1 Moench v. Robertson, 62 F.3d 553 (3rd Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996); and _, 66 F.3d 1447 (6th Cir. 1995).

**What is the Impact of a Lockdown or Blackout Period?**

One of the factual allegations in the Enron litigation is that Enron switched 401(k) plan administrators and imposed a "lockdown" or "blackout period" on participants' trading in Enron stock. This raises the questions of what is a lockdown, how does it fit into the foregoing ERISA scheme, why is it important, and what could have been done to provide additional protections for plan participants?

A lockdown is a planned "freeze" of all trading activity within a plan necessary to effect a "conversion" or transfer of records and assets from one service provider to another. In order to effect conversions, plan assets must be reconciled at both the participant level and trust level. This can be a complicated process that may take some time to complete. For example, for any one participant in a plan, numerous, different accounts must be maintained. There may be a deferral account holding the participant's salary deferrals, an account for the employer's matching contributions based on the deferral amount, and an employer profit sharing contribution. There may be profit sharing or matching contributions from a prior employer that need to be separated because the old plan had a special feature like an annuity option that needs to be protected. There could be IRA contributions or after-tax contributions that need to be segregated. For each participant, each of these accounts will be invested in the various mutual funds or other investments offered under the plan. Or they could be invested in company stock. Sometimes participants invest in an even broader spectrum of investments through a self-directed brokerage account. In a conversion, every penny in each of these accounts must be accounted for and reconciled in order to effect the transfer properly.

It has been estimated that over 20,000 conversions occur every year. Conversions typically occur when there is a plan merger or spin off or when it becomes necessary to change service providers. Even with sophisticated computer recordkeeping, our present-day financial systems and technology cannot accommodate a change of recordkeeping and custody of assets without allowing several days or weeks to accomplish the task. There is no standard length of time for the lockdown period. It could take a day or two, or it could take several months. The length of the lockdown period is a function of at least two major factors: The status or condition of the records and assets, and technology. Plan service providers are well aware of the need to effect conversions efficiently and with a minimum disruption to participants. Within the retirement services industry, the ability to effect conversions is an important factor in maintaining a competitive edge.

Given this, I would like to make the following observations. First, ERISA does not contain any specific rules relating to conversions or lockdowns. Nothing in ERISA mandates that participants be allowed to direct trades on a daily basis. Second, nothing in ERISA mandates that participants be allowed to direct trades *at all*. Consequently, the existence of the lockdown, in and of itself, does not violate any specific ERISA duty. Third, conversions or lockdowns typically occur as a natural consequence of plan sponsors' fiduciary decision to change service providers. Where a change in providers is necessitated by poor performance, a lockdown is unavoidable. In deciding to effect a conversion through a change in providers, a plan sponsor must satisfy the prudence and other fiduciary responsibility provisions of ERISA. Accordingly, if a lockdown is imposed, or timed, for reasons other than the best interest of the plan and its participants, ERISA already provides a remedy for breach of fiduciary duty.

**Conclusion**

In concluding my remarks, I want to address briefly the fundamental question about how we can avoid problems like Enron in the future. Is legislation the answer? The SPARK Institute has not yet concluded that legislation is necessary. However, recognizing that we have a voluntary pension system in this country, that employers who sponsor plans are free to contribute or not, and that such contributions can be made in cash or stock, we have to focus on the effect any legislation will have on our retirement system as a whole.

Whether we need legislation or not, it is evident that Enron demonstrates the need for more and better investment education for plan participants. This is demonstrated poignantly in the Washington Post article from Sunday, January 20, 2002, profiling various employees of an Enron subsidiary. These employees, all of whom were nearing retirement age, had amassed substantial 401(k) account balances by allocating all of their plan assets into employer stock. A few attended a participant investment education briefing where the consultant urged the workers to diversify. Some understood the message and even diversified their portfolios for a short time. Ultimately, many switched all of their 401(k) account balances back into company stock. This made me think that if the Boehner bill on investment advice had passed, perhaps a better, stronger message to diversify would have reached more employees and the outcome would have been different. Thus, aside from the truly unfortunate outcome of this article, there is a kernel of hope that if investment education is made available, and it is made available on a regular basis, the message will be understood, and the correct choices will be made.

On behalf of the SPARK Institute, I am grateful for the opportunity to share our views with you and I would be happy to answer any questions that you have.

**U.S. Senate**
**Committee on Governmental Affairs**

**Enron Hearings**
**February 5, 2002**

**PREPARED STATEMENT OF PROFESSOR SUSAN J. STABILE**

My name is Susan Stabile. I am a Professor of Law at St. John's University School of Law in New York City, where I teach courses in pensions and employee benefits and employment law. Prior to joining the St. John's faculty, I was associated with the law firm of Cleary, Gottlieb, Steen and Hamilton, where my practice was concentrated in the employee benefits area. Among other areas of my scholarship, I have been researching and writing about 401(k) plans for the last several years.[1] I have been particularly concerned about the heavy accumulations of employer securities by employees who participate in 401(k) plans and I appreciate very much this opportunity to testify before you today concerning the pension aspects of the Enron situation.

In this statement, I will briefly address three points:

- First, current law permits employees to invest an unlimited amount of their 401(k) account balances in employer securities. If permitted to do so, employees will disproportionately invest in employer stock, with the result that the retirement security of millions of workers is at risk. Given the reasons for this disproportionate investment, it is desirable that Congress impose limits on acquisitions of employer securities by 401(k) plans.

[1] Susan J. Stabile, *The Behavior of Defined Contribution Plan Participants*, Forthcoming, New York University Law Review (2002); Susan J. Stabile, *Paternalism Isn't Always A Dirty Work: Can the Law Better Protect Defined Contribution Plan Participants*, Forthcoming, Employee Rights and Employment Policy Journal (2001); Susan J. Stabile, *Pension Plan Investments in Employer Securities: More Is Not Always Better*, 15 YALE J. ON REG. 62 (1998).

- Second, although the losses suffered by Enron employees are likely to be replicated if any number of other large U.S. corporations suffers a serious financial downturn, improper behavior by persons ERISA designates as fiduciaries to Enron's 401(k) plan may have aggravated the losses. Current law, however, is sufficient to address that improper behavior.
- Third, in considering what action to take to try to prevent future employee losses, Congress should not be moved by threats that employers will offer less generous benefits or will suffer from an inability to provide incentives to their employees. Competitive and other pressures will force companies to continue to provide benefits to their employees; and employees can be sufficiently motivated without bloating their retirement accounts with company stock.

*I. The Non-Uniqueness of the Enron Pension Catastrophe*

At the end of 2000, 62% of Enron's 401(k) plan assets were invested in Enron common stock.[2] That makes Enron's 401(k) plan no different from that of many other companies. Most 401(k) plans of large public companies have an employer stock fund. Employees who participate in 401(k) plans that do offer an employer stock option invest an average of about one-third of their plan assets in company stock.[3] The 401(k) plan

[2] Patrick Purcell, *The Enron Bankruptcy and Employer Stock in Retirement Plans*, CRS Report for Congress, Jan. 22, 2002, at p.3. Eighty-nine percent of this represents stock purchased by employees and the rest is attributable to company matching contributions. *Id.*

[3] Sarah Holden and Jack VenDerhei, *401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2000*, 7 INVESTMENT COMPANY INSTITUTE PERSPECTIVE at 9, Figure * (Nov. 2001). Overall, employer stock represents 19% of all 401(k) assets, but that percentage includes all plans. *Id.* Participants in plans offering company stock have "dramatically lower allocations to equity funds and balanced funds" than plans without company stock funds. *Id.*

assets of one in five companies is at least 50% invested in the company's own stock[4] and at some companies the figures are much higher. Just to give some examples:

- Proctor & Gamble – 94.7% invested in employer securities;
- Sherwin-Williams – 91.6% invested in employer securities;
- Abbott Laboratories – 90.2% invested in employer securities;
- Pfizer – 85.5% invested in employer securities.[5]

The law does nothing to prevent these vast accumulations of employer stock in employee's 401(k) plan accounts. ERISA, the federal statute that regulates pension plans of private employers, does label as a fiduciary those persons responsible for investing plan assets and imposes on fiduciaries a statutory obligation to live up to certain standards of behavior. However, notwithstanding the statute's designation of those who exercise control over investment of pension plan assets as a fiduciary, ERISA specifically provides that employees who exercise control over their plan accounts are not deemed to be fiduciaries by reason of such exercise. Therefore, although heavy plan investments in a single security would seem to violate both ERISA's prudence and diversification standards, those standards have no applicability to participant decisions.

The regulatory regime for 401(k) plans is thus very different from that of traditional defined benefit plan. Traditional defined benefit plans promise payment of a certain benefit on retirement. That benefit is funded by employer contributions that are invested by professional asset managers subject to fiduciary standards. Any risk of poor investment experience is born by the employer. In 401(k) plans, where the benefit

[4] *See* Theo Francis, *Company Stock Fills Many Retirement Plans Despite the Potential Risks to Employees*, WALL ST. J., Sept. 11, 2001 (reporting result of study of Institute of Management and Administration).

[5] Patrick Purcell, *The Enron Bankruptcy and Employer Stock in Retirement Plans*, CRS Report for Congress, Jan. 22, 2002, at p.4, Table 1.

received is completely a function of the investment experience of contributed funds, investment decisions are made by individual plan participants, who may have no financial sophistication or access to investment advice, and who are subject to no standards whatsoever.

ERISA does impose some limits on acquisitions of employer securities by pension plans. The statute limits the acquisition of employer securities by defined benefit plans and by employer-directed defined contribution plans to up to 10% of the plans' assets. However, no similar limits apply to acquisitions by participant-directed plans, and 87% of 401(k) plans, accounting for 83% of active plan participants, provide for participant direction.[6]

The law also permits employers to make matching contributions in the form of employer stock. Many companies take advantage of this ability, requiring that matches be made in company stock and imposing long waiting periods before allowing employees to switch such matching contributions to another investment alternative.[7] A recent survey by the Employee Benefits Research Institute found that matches are required to be invested in company stock in 43% of 401(k) plans offering an employer stock fund.[8]

Why do so many employees invest such significant portions of their plan account balances in employer securities? It is worthwhile to briefly consider the reasons for such

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[6] United States Department of Labor, Pension and Welfare Benefits Administration, Abstract of 1997 Form 5500 Annual Reports, Private Pension Plan Bulletin No. 10 (Winter 2001), *available at* www.dol.gov/pwba/public/programs/opr/bullet97).

[7] Theo Francis, *Company Stock Fills Many Retirement Plans Despite the Potential Risks to Employees*, WALL ST. J., Sept. 11, 2001 (noting that many employers match employee 401(k) contributions with company stock and giving Gillette, Abott Labs and Coca-Cola as examples of such companies); Jim Davenport, *When All the Eggs are in the Company Basket*, CHI. TRIB., Aug. 14, 1995, at 3 (reporting finding of Buck Consultants that 18% of all companies surveyed, and 40% of the largest companies surveyed, matched contributions with employer stock).

[8] Jack L. VenDerhei, *Company Stock in 401(k) Plans: Results of a Survey of ISCEBS Members*, EBRI Special Report, Jan. 28, 2002, at p.5.

heavy investments, because the reasons are instructive on the question whether this lack of diversification can be successfully addressed by increased education and disclosure.

First, as Enron employees testified during hearings held in December by the Senate Commerce Committee, many employees invest heavily in employer stock out of a sense of loyalty to their employer.[9] Although this is not an issue on which I have seen empirical work, loyalty as a factor in investments in employer securities is something commonly raised in academic literature and in press reports of discussions with employees. It appears that investment in employer securities is very much an emotional issue. Even employees who understand the value of diversification in the abstract and who say they would never advise a friend or relative to be so heavily invested in a single security, put large portions of their own account balance in the stock of their employer. This is not just a question of lack of financial sophistication, as illustrated by the example of a GM executive several years ago who, despite his participation in all discussions with analysts about the company's financial prospects, insisted on investing enormous amounts in GM stock as the stock was falling. By the time the stock finished plummeting, he lost $160,000 of his retirement money.[10]

Closely related to their own feelings of loyalty is the sense on the part of many employees that they are expected by their employer to invest heavily in company stock, that is, that the corporate culture encourages such investment or that employers will perceive as loyal those employees who so invest. Actual or perceived pressure by the employer is a much harder phenomenon to document. However, ERISA's legislative

[9] I discuss the loyalty issue more extensively in both the Yale Journal on Regulation and NYU articles cited in footnote 1.

[10] Lewis Braham, *Institutional Asset Management: The Growing Number of Options in Qualified Plan is Boom for Planners in the Short Run But Could Spell Trouble in the Long*, FIN. PLAN., Jul. 1, 1997.

history suggests that Congress was concerned with the possibility that employees might be pressured by employers to acquire company stock[11] and the complaints in both a lawsuit filed against Lucent Technologies in July of 2001 and in some of the employee suits filed against Enron allege that the employers improperly induced employees to invest.

Additionally, practices like requiring matching contributions to be invested in company stock and offering company stock at a discount to employees suggest that employers do attempt to influence employees' investment decisions. Those practices are successful. A recent study by the Employee Benefits Research Institute found that the effect of a plan requiring matching contributions to be invested in employer securities is to cause employees to direct a higher percentage of their self-directed funds there as well.[12] This phenomenon may be explained by what one researcher has termed an "endorsement effect" – employees interpret matches in employer securities as an "endorsement or as implicit investment advice."[13]

Finally, many employees invest heavily in their employer's stock because of overconfidence in the employer and an optimistic bias that makes them think that other companies are more likely to experience downturns than their own.[14] Employees feel a

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[11] H.R. REP. NO. 1280, 93d Cong., 2d Sess. at 305 (1974).

[12] Sarah Holden & Jack VanDerhei, *401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2000*, 7 INVESTMENT COMPANY INSTITUTE PERSPECTIVE at 10 (Nov. 2001) (33% of participant contributions invested in employer securities where company matches in stock compared to 22.2% of participant contributions invested in employer securities where company does not direct investment of the match). *See also* Jack L. VenDerhei, *Company Stock in 401(k) Plans: Results of a Survey of ISCEBS Members*, EBRI Special Report, Jan. 28, 2002, at p.2 (reporting survey results confirming earlier findings).

[13] Shlomo Benartzi, *Excessive Extrapolation and the Allocation of 401(k) Accounts to Company Stock*, 61 J. OF FIN. 1747, 1752 (2001).

[14] *See id.* at 1748 (noting that employees conclude that high past performance of the employer is representative of future performance, giving them inflated confidence in the employer); Maya Kroumova Kroumova, *Investment in Employer Stock Through 401(k) Plans: Is There Reason For Concern?*,

greater comfort and certainty with the stock of their employer, feeling that an investment there is less risky than an investment elsewhere. This is particularly understandable given that an employee is faced with the choice among an array of unfamiliar investment options and his own employer's stock, which is familiar and comfortable.

What all of this means is that, for reasons that are heavily emotional and psychological, if employees are given unlimited ability to invest in employer securities, they will invest disproportionately large portions of their 401(k) account balance in employer securities. This suits the interests of employers: employees represent a group of stockholders who are not likely to operate as an effective check on management. Indeed, one motive for employers to include a company stock fund as a 401(k) investment option is precisely that it serves as a means of placing large blocks of shares in friendly hands. Employers believe that employees will be more concerned with current job security than with the future value of their retirement benefit and thus will make voting and tender offer decisions that favor the interests of current management. There is good basis for that belief. According to a survey conducted several years ago by the Employee Benefit Research Institute, 65% of plan participants indicated that they would not vote in favor of acquisition of their employer by a hostile acquirer even if doing so would result in a 50% return on their investment, and 56% said they would do so even for a 100% return on their investment.[15] At a minimum, employee shareholders are less likely to be vocal antagonists to management positions.

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Dissertation, Graduate School – New Brunswick Rutgers, the State University of New Jersey, Jan. 2000, at p. 75 (citing findings of Kahneman, Knetsch & Thaler).

[15] Employee Benefit Research Institute, *Public Attitudes on Employee Ownership and Benefit Promises*, EBRI/GALLUP REPORT G-54 (1994).

While heavy accumulations of employer securities in 401(k) plan accounts may be good for management, Enron's fall has graphically illustrated that it is not good for employees. If we are concerned with ensuring adequate retirement security, it is necessary to consider regulation in this area. Given the reasons for such heavy employee investment in employer securities (which have little to do with a failure to understand in general terms the value of diversification), I am not confident that simply requiring more disclosure will be effective. Therefore, as I have advocated in my writings, I believe Congress should consider imposing limits on the percentage of a participant's account balance that is invested in employer securities. Since the law already imposes a limit on the acquisition of employer securities by defined benefit pension plans and by employer-directed defined contribution plans, such a change would simply extend that regime to participant-directed 401(k) plans.

*II. The Unique Enron Wrinkles*

As I suggested in the first portion of my remarks, to a large extent the law permits creation of a scenario that will result in large participant losses in the event of a financial catastrophe such as Enron. There is no limit on how much of a participant's account balance can be invested in employer securities. Employers are permitted to match in company stock and to prevent their employees from transferring matching contributions out of that stock for many years.

None of that, however, excuses Enron for making a bad situation worse. Let me briefly address two issues. The first is what has been referred to as the "lockdown," the fact that employees were prevented from moving funds out of the employer stock fund for a disputed period in late October. The second is the question of possible misrepresentations to employees.

1. The Lockdown. Under the version of the facts most favorable to the company (and these facts are based on news reports and company press releases): In February 2001 Enron decided to change plan administrators, a change that would require a period in which plan accounts would be frozen to allow an orderly and accurate transfer of records to the new administrator. (This is the period of time referred to as the lockdown. It is also sometimes referred to as a "transaction suspension period" or a "blackout.") In September and October 2001, employees received various e-mails informing them of the dates of the lockdowns. For a disputed number of days, occurring roughly from the middle of October to the middle of November, employees were prevented from moving shares out of the employer stock fund, and this was a time during which Enron's stock was steadily declining in value.

Those who make decisions regarding the administration of pension plans are fiduciaries subject to statutory standards of prudence and loyalty to plan participants. A decision to impose a lockdown for the purpose of propping up the company's stock value obviously would breach a duty of loyalty to plan participants. A lockdown to facilitate a transfer of plan records to a new administrator is a routine[16] and permissible action. Such a suspension of trading is necessary to that the new recordkeeper can verify the accuracy of accounts.

However, even if the motive for the Enron lockdown in October/November was to facilitate transfer to a new administrator, one has to question the decision of the plan fiduciaries to go ahead with the lockdown in light of the circumstances then prevailing. That is, by the time the actual lockdown was set to occur, it should have already been clear to those making plan decisions that the company's financial situation was precarious at best. Therefore, preventing plan participants from being able to transfer out of the company stock fund at that particular point in time was neither prudent nor in the best interests of plan participants. It is hard to imagine any compelling reason that the change in administrator had to occur when it did. Some plan fiduciary, acting in the best interests of plan participants, should have made the decision that the transfer to the new plan administrator could be delayed. The failure to do so should be viewed as a breach of the ERISA fiduciary duties of loyalty and prudence, thus entitling employees to a remedy under current law.[17]

Let me emphasize that lockdowns *per se* are not a problem. They are routine and necessary to deal with changes in administrators, changes in the plan, such as changes in frequency of valuations of accounts, and changes in corporate structure, such as mergers. Clearly employees should have prior notice of lockdowns and, equally clearly, a lockdown should not be timed to coincide with foreseeable downward movement in a company's stock. I believe that both of those are required by ERISA's general standards of prudence and loyalty.

2. Possible Misrepresentations. A second issue concerns the disclosures that were made to plan participants during the late summer and early fall of 2001. Again,

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[16] According to research conducted by the Profit Sharing/401(k) Council of America, on any given business day, 96 401(k) plans are in a lockdown. Dennis K. Berman, *Accounting for Enron: All Tied Up: Retirement Plan Lockdowns at Lucent and Elsewhere Draw Questions*, WALL ST. J., Jan. 21, 2002, at C14.

[17] It also appears from press reports that employees may have received conflicting information about when the lockdown would begin. If employees were misled (intentionally or otherwise) about the timing of the

based on public reports in the press, it appears that insiders knew that Enron was in serious trouble as early as last spring. However, as late as August, employees were receiving e-mails from Enron's CEO talking about the company's rosy prospects for the future. Additionally, it appears that there were various employee meetings at which employees were assured of the company's good future by the CEO and others.

ERISA has nothing to say about what a company CEO tells his employees about a company's prospects. What ERISA does prohibit, as a violation of its fiduciary standards, is misrepresentations from a plan fiduciary to plan participants. The question of when a company official is wearing his "fiduciary" hat or his "employer" hat is one that frequently gives courts difficulty. However, in 1996, the Supreme Court, in *Varity v. Howe*,[18] provided some guidance on this question as it relates to statements about the company and its prospects. The Court held that statements about a company's future prospects, if they are made in the context of discussions about the company's benefit plans and by persons who employees would perceive to be acting in the capacity of plan administrator as well as employer, may be viewed as statements made by a fiduciary. Depending on the nature of the Enron employee meetings and the content and purpose of the e-mails and other written materials sent to employees, there is at least a question whether a fiduciary misrepresentation was made to plan participants. If such misrepresentations were made, employees have a claim under ERISA to restore their

lockdown and were unable to sell at a time they thought selling would be possible, that may give them another claim.

[18] 516 U.S. 489 (1996).

losses. Whether they can find defendants with sufficient assets or insurance to pay the losses is a different question.[19]

*III. Beware the Rhetoric*

The devastating effects of Enron's financial collapse to 401(k) plan participants have obviously prompted many to call for reconsideration of the laws regulating private pensions. Those calls for change will be met by warnings of doom and it is important to look through the broad rhetorical statements that will be made.

1. <u>The prediction (threat) that employers will offer less generous benefits</u>. From the time ERISA was contemplated, claims have been made that increased pension regulation will cause employers to stop offering pension plans or to fund them less generously. In the context of employer securities, the claim is made that if you don't let employers match in company stock, or if you force them to allow employees to diversify matching contributions that are made in company stock, employers will stop making matching contributions.

The claim is unpersuasive. From a competitive point of view, employers will fear that not offering matching contributions will make them less attractive compared to other companies that do offer matching contributions. Moreover, matching contributions are used by employers to induce participation in 401(k) plans by their lower-paid employees.[20] That participation in important for two reasons. First, employers need for their older employees to be able to retire to make room for the hiring of new employees, and it is therefore in their interest for employees to build up 401(k) account balances.

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[19] The reality that recovery may be impossible suggests that value of an approach that limits employees' exposure to employer securities rather than relying on a lawsuit after the stock has lost its value.

Second, the Internal Revenue Code requirements for tax qualification of pension plans include nondiscrimination rules designed to ensure that plans not discriminate in favor of highly compensated employees. The rules as they currently exist (the rules having been vastly simplified by the Small Business Job Protection Act of 1996) provide a safe harbor for plans that provide a certain level of employer matching contributions or that provide a minimum nonelective employer contribution. Plans that do not meet the safe harbor have to undergo complex testing that requires extensive record keeping, monitoring and calculations. Moreover, to pass that test, it is still important that lower-income employees participate in the plan. Thus, important motivations for matching contributions remain even if employers cannot match in company stock.

2. The claim that employers need to be able to motivate their employees with stock. Employers argue that it is important for them to match in stock and encourage employees to hold significant amounts of stock in their 401(k) plan accounts to better motivate employees and align their interests with those of shareholders. This argument raises the question whether the benefits of broad-based stock ownership through a vehicle such as a 401(k) plan outweigh the concerns raised by significant acquisition of employer securities in 401(k) plans.

There are reasons to question whether broad-based stock ownership through retirement plans significantly contributes to employee motivation and incentive. Much of the purported evidence of improved company performance speaks in general terms about stock ownership and is not linked to *plan* ownership. If employee ownership does positively affect worker productivity, it is more likely to do so when employees hold

[20] Jack VanDerhei and Craig Copeland, *A Behavioral Model for Predicting Employee Contributions to 401(k) Plans,* 5 NORTH AMER. ACTUARIAL J 80 (2001) (finding availability and level of matching

stock directly than when the employee has merely a right to receive a value of shares at a time long in the future. The latter is much less visible, especially to employees who rarely look at their plan statements. In fact, according to one study that considered data from 1990-1996, the average total shareholder return in companies that had employer securities in their defined contribution plans did not differ from the average return of those companies without any employer securities.[21] The same study found "some supportive evidence" of a positive relationship between risk-adjusted stock returns and employee ownership, but it was nonlinear, i.e., the presence of some stock was helpful, but more stock was not more beneficial.[22] This suggests that it is possible to get whatever benefit there is to be obtained from plan stock ownership without massive accumulations that put retirement security in jeopardy. Thus, if employers want to provide incentives to their employees, let them do so outside of their pension plans, the primary purpose of which is to provide retirement security.

* * * * * *

When ERISA was enacted in 1974, the dominant means of providing pension benefits was the defined benefit pension plan, which promised participants a stated annual pension for their lifetimes. In stark contrast, it is now the case that defined contribution plans account for over 80% of pension plans and over 60% of plan participants.[23] Notwithstanding earlier data that appeared to suggest otherwise, for many

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contributions to be primary impetus for participant contributions).

[21] *See* Maya Kroumova Kroumova, *Investment in Employer Stock Through 401(k) Plans: Is There Reason For Concern?*, Dissertation, Graduate School – New Brunswick Rutgers, the State University of New Jersey, Jan. 2000, at p. 138-39.

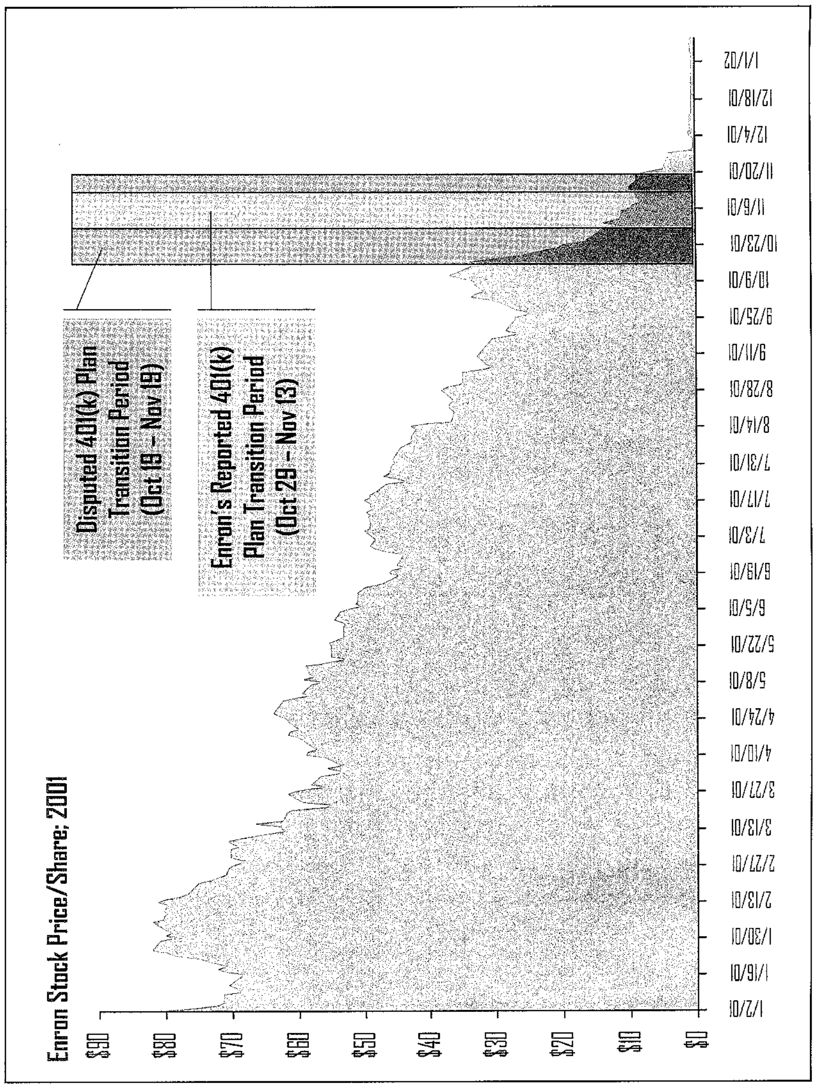
[22] *Id.* at 139.

[23] *See* U.S. General Accounting Office, Report to the Chariman, Special Committee on Aging, and the Honorable Judd Gregg, U.S. Senate, *401(k) Pension Plans: Loan Provisions Enhance Participation But May Affect Income Security for Some*, GAO/HEHS-98-5, October 1997, at p.3.

employees, their 401(k) plan is their only meaningful source of employer-provided retirement income, not merely a supplemental plan providing a tax-deferred investment for affluent employees.[24] Thus, ensuring the safety and soundness of 401(k) plans is essential to securing retirement security for American workers.

Congress made the decision a long time ago that adequate retirement security was an important national objective. Federal law grants an enormous tax subsidy to tax-qualified pension plans to promote retirement savings. Because society bears the cost of this tax largesse and will bear the cost of massive numbers of individuals retiring with inadequate plan account balances, the government has an interest in making sure the system that it has created achieves its objectives. I support suggestions for increased disclosure, but I do not believe additional disclosure standing alone is sufficient. Congress should seriously consider legislation that would limit the percentage of a participant's 401(k) plan account balance that can be invested in employer securities to conform to the limits currently in place for defined benefit plans and employer-directed defined contribution plans.

[24] *See* Leslie E. Papke, *Are 401(k) Plans Replacing Other Employer-Provided Pensions? Evidence From Panel Data*, NBER Working Paper Series, Working Paper 5736, August 1996 (concluding that more recent data suggests that 401(k) plans are replacing defined benefit plans rather than serving as a means for additional savings and also citing early contrary findings).



Enron Stock Price/Share; 2001
Disputed 401(k) Plan Transition Period (Oct 18 – Nov 19)
Enron's Reported 401(k) Plan Transition Period (Oct 29 – Nov 13)
$90
$80
$70
$60
$50
$40
$30
$20
$10
$0
1/2/01
1/16/01
1/30/01
2/13/01
2/27/01
3/13/01
3/27/01
4/10/01
4/24/01
5/8/01
5/22/01
6/5/01
6/19/01
7/3/01
7/17/01
7/31/01
8/14/01
8/28/01
9/11/01
9/25/01
10/9/01
10/23/01
11/6/01
11/20/01
12/4/01
12/18/01
1/1/02

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

March 7, 2002

Ms. Cindy Olson
Executive Vice President, Human Resources
Employee Relations and Building Services
Enron Corporation
1400 Smith Street, Suite #1621
Houston, TX 77002

Dear Ms. Olson:

I am writing you as a follow up to the testimony you provided before the Senate Governmental Affairs Committee on February 5, 2002. Since that time, I have received information that seems inconsistent with testimony you gave the Committee. I would appreciate your reviewing that information and providing the Committee with your response.

As you are aware, many Enron employees invested large portions of their 401(k) savings in company stock. Enron reports show that at the end of 2000, more than $1.3 billion of the company's 401(k) retirement plans were invested in Enron stock-- an investment which is now virtually worthless.

Pursuant to a request made by Congressman Henry A. Waxman, Ranking Minority Member to the House Committee on Governmental Reform, lawyers for Enron provided nine videotapes of Enron's all employee meetings. These meetings consisted of presentations by Enron's management, who also responded to questions submitted by the company's employees.

A 1999 videotape, a copy of which is enclosed, shows employees' submitted questions being answered by former Enron executives Kenneth Lay, Jeffrey Skilling, and Joseph Sutton. When some 401(k) related questions were asked, former President and COO Skilling requested your attendance at the podium to respond. One employee asked: "Should we invest all of our 401(k) in Enron stock?" You responded, "Absolutely." You then turned to the other members on the podium posing the question: "Don't you guys agree?" Mr. Skilling, being the only visible member, appears to have nodded his head in agreement.

During your testimony before the Governmental Affairs Committee, you were asked why Enron did not encourage employees to diversify their 401(k) savings. You responded:

> When you get financial advice, though, it's so individualized. It's hard for the administrative committee to say, that, blanket, we should do something with people's

retirement accounts because you've really got to look at how they individually are diversified.

You also testified that Enron would have encouraged employees to diversify their holdings had it not been legally prevented from giving investment advice:

> We tried to talk about diversification with respect to choice in the 401(k). We gave, through benefit fairs and we gave some investment– what we call–"brown bags" that employees could come and hear financial advisors talk. But there's a fine line that employers have with respect to giving investment advice. And so we were concerned about stepping over that line....
>
> I'd also like to see the laws relaxed in that employers can help give their employees investment advice because I do think that would have helped in the Enron situation. We gave them a lot of choice, which our employees wanted. But they didn't have the information they needed to be able to make smart choices.

I am concerned by the apparent inconsistency between your 1999 advice to Enron's employees suggesting they invest all of their retirement savings in Enron stock and your recent testimony to the Committee that you were frustrated that you could not give Enron employees investment advice. I would appreciate your letting the Committee know whether you see these two statements as inconsistent, and if you do not, why not?

I look forward to your prompt response.

Sincerely,

Joseph I. Lieberman
Chairman

Enclosure

CC: Fred Thompson
Ranking Minority Member
Henry Waxman
Ranking Minority Member
House Committee on Government Reform

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Jacks C. Nickens

March 18, 2002

**By Fax and First Class Mail**

The Honorable Joseph I. Lieberman
Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 21510-6250

Dear Chairman Lieberman:

I am one of the attorneys representing Cindy Olson and I am writing to respond to your March 7, 2002 letter regarding Ms. Olson's appearance before the Senate Governmental Affairs Committee on February 5, 2002. The specific question you raised refers to a videotape recording of an Enron "all employee" meeting held in 1999.

Typically during "all employee" meetings, Enron's top management would hold an open forum during which they would answer questions from interested Enron employees. In this particular meeting, a question was raised from an employee concerning the company's ESOP. Ms. Olson was called up from the audience, in her capacity as Executive Vice President of Human Resources and Community Relations, to respond to the question. She was not a member of the Administrative Committee of the Enron qualified benefits plans at that time. While she was on the stage, she was then, impromptu, handed another question concerning an employee's investment in the 401(k) plan. She gave a one-word answer intended to be humorous and put the question back to those running the meeting. As the tape demonstrates, Ms. Olson's answer was greeted with laughter by those running the meeting and by the audience.

You asked whether Ms. Olson's off-hand comment at the meeting is inconsistent with her statement before the Committee concerning the diversification of employees' 401(k) investment holdings. If taken out of context and viewed in light of today's circumstances, Ms. Olson's response at the employee meeting in 1999 could be misunderstood. Recognizing this, today Ms. Olson wishes she had answered the employees' question differently. However, it is important and only fair, to consider the different times and different contexts in which the two comments were made.

I have enclosed for the Committee's benefit a response to an Enron employee email in a question and answer session called "ethink" a year later in November 2000. The transcript of this

Hon. Joseph I. Lieberman
March 18, 2002
Page Two

exchange reflects that, in response to an employee question concerning why the company could not provide investment forums to educate employees regarding enhancing investment returns, she answered, "We encourage employees to discuss these questions with a financial advisor or tax expert. Because everyone's situation, risk tolerance and diversification goals are different, there is no one solution that works for everyone." This serious response reflects Ms. Olson's views.

We appreciate the opportunity to address your concerns.

Very truly yours,

Jacks C. Nickens

Jacks C. Nickens

Enclosure
cc: The Honorable Fred Thompson

## Enron Options

***Featuring Cindy Olson, executive vice president, Human Resources & Community Affairs,***
**November 2nd, 2000 10:00 AM CST**

Transcript Generated on Thursday, December 27, 2001 3:49:18 PM CST.

**CINDY OLSON COMMENTS** (POSTED ON 11/02/2000 10:00 A.M.)
The All Employee Stock Option program has been a tremendous benefit for all of us. This program has yielded over 1,000 percent since its inception.

Now we are introducing the new program, EnronOptions, which should prove to be as beneficial to all of us. The program will be effective December 29, 2000.

This is your opportunity to ask me questions about the program, so let's get started.

**KEITH.E.POWER ASKS** (POSTED ON 11/02/2000 10:02 A.M.)
*Hi Cindy - Why can't we provide investment forums to educate employees on methods to enhance returns on this type of benefit - in effect ways to create options on options? A quick example would be the 1995 plan and an option grant of 1,500 shares. Adjusting for splits, today, @ roughly $82 ? per share, those options, if never exercised, are pre-tax in the money (strike of $15.25 / share) approximately $201,000. If you had bought the underlying shares on each yearly vesting date and then margined the same number of shares, today you would control 6,000 shares with a value of $493,500 and you would have margin debt of roughly $57,000. Conceded, there are other factors to consider - the opportunity cost of capital to buy the shares and pay the taxes, using dividend stream to mitigate the cost of carry on the margin debt, etc. However, all of those issues can be modeled with a reasonable degree of probability and can be made to incorporate your personal viewpoint - do you want to be long, do you want to be short, or do you simply want portfolio protection. This is a great program, but it seems like we present it like here's vanilla or here's chocolate - there are lots of flavors out there we are not helping people experience.*

**CINDY OLSON REPLIES**
Thank you for your question. We encourage employees to discuss these questions with a financial advisor or tax expert. Because everyone's situation, risk tolerance and diversification goals are different, there is no one solution that works for everyone.

**LHALSTEA ASKS** (POSTED ON 11/02/2000 10:05 A.M.)
*RE:TUITION REIMBURSEMENT Just wondering if ENRON has ever considered reimbursing 100% for graduate school. Due to the fact that the government taxes graduate school tutition approximately 30% and students are also required to pay the remaining 10% (after ENRON pays 90%), the out of pocket costs can be quite substantial. State graduate schools are approximately $32K for a two year program which would amount to ~13K for out of pocket expenses. This is a substantial amount to fund individually (not to mention single parents who are trying to fund this amount on their own). Furthermore, our competitors ARE funding 100%.*

**CINDY OLSON REPLIES**
We offer employees the most competitive benefits in the industry, overall. We believe that you will get the most out of your education when you participate in some of its cost. This is our philosophy with many of the benefits we provide to employees. Just as the medical plan offers you a flexible menu of choices and subsidizes accompanying costs, so does the educational reimbursement program.

**KELLY.ELLIS ASKS** (POSTED ON 11/02/2000 10:07 A.M.)
*At what price will the options be offered?*

**CINDY OLSON REPLIES**
Thanks for your question. The "strike" price will be the closing price on December 29, 2000, as reported in the NYSE section of the Midwest edition of The Wall Street Journal.

**JUDY.KNEPSHIELD ASKS** (POSTED ON 11/02/2000 10:10 A.M.)
*HR Question: Has Enron developed specific programs for people who need to temporarily scale down their work while they are raising children, going to school or helping an elderly parent while they are ill. I am familiar with the family leave program, but what about fewer hours or fewer days?*

**CINDY OLSON REPLIES**
Yes, we have a part-time program available to employees. Based upon your job and the needs of the business unit, the part-time option may be appropriate for you. I encourage you to approach your supervisor and HR representative to discuss this option. You can find your HR representative in eHROnline.

As you mentioned, Enron does offer time off for family or medical leave. Under the policy, you can take up to 12 weeks of unpaid leave for qualifying events. This leave can be taken all at once or intermittently. If you want to review this policy, it is available on the HR web site.

**KELLY.ELLIS ASKS** (POSTED ON 11/02/2000 10:18 A.M.)
*How many options will be available and will it be based on ones salary?*

**CINDY OLSON REPLIES**
The program may vary slightly based upon international considerations or business unit participation. Eligible employees will find out the specific number of options when they get their award agreements early in 2001.

During the initial year of the EnronOptions program, you will be granted stock options equal to 25 percent of your salary (a rate of 5 percent per year for the 5-year program). The number of stock options you receive is based on two numbers:

1. Your annual base salary on the grant date.
2. The Black-Scholes value for Enron stock on the grant date.

**TEAM_MACKSVILLE ASKS** (POSTED ON 11/02/2000 10:21 A.M.)
*It seems that the number of options that will be granted to each employee is less than the amount we recieved during the last program, by about 1/3, is this correct?*

**CINDY OLSON REPLIES**
Due to Enron's stock price increase and volatility, the Black-Scholes value is higher than it was for the prior program. Therefore, fewer options deliver the same value.

**CTEEL ASKS** (POSTED ON 11/02/2000 10:25 A.M.)
*I am new the concept of options. Could you please explain how this will work?*

**CINDY OLSON REPLIES**
A stock option gives its owner the right to buy stock at a set price for a specified period of time -- no matter how much the price of the stock fluctuates. As the price of Enron stock increases above the strike price, so does the value of the EnronOption stock options. EnronOptions are an easy way for employees to become owners of Enron.

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 8, 2002

Ms. Cindy Olson
Executive Vice President, Human Resources
Employee Relations and Building Services
Enron Corporation
1400 Smith Street, Suite #1621
Houston, TX 77002

Dear Ms. Olson:

Thank you for the March 18, 2002 letter drafted and signed by your Attorney Jacks Nickens. Although I appreciate the prompt response from your attorney, my letter was directed to you personally in an effort to obtain clarification of your sworn testimony to the Senate Governmental Affairs Committee and for purposes of including your response into the hearing's official record. Therefore, I am now requesting that you provide me with a sworn affidavit responding to the questions asked in my March 7, 2002 letter, specifically: is your 1999 statement to Enron's employees suggesting they invest all of their retirement savings in Enron stock inconsistent with your February 5, 2002 testimony to the Committee that you were frustrated that you could not give Enron employees investment advice, and if not why not.

I look forward to your response.

Sincerely,

Joseph I. Lieberman
Chairman

CC: Fred Thompson
Ranking Minority Member

**Cindy Olson**
*Executive Vice President*
*Human Resources & Community Relations*

**Enron**
*1400 Smith Street*
*Houston, TX 77002-7361*
*(713) 853-7418*
*Fax (713) 646-3050*
*colson@enron.com*

June 13,2002

By Fax and First Class Mail

The Honorable Joseph I. Lieberman
Chairman
c/o Ms. Cynthia Lesser
Committee on Governmental Affairs
United States Senate
Washington, DC 21510-6250

Dear Chairman Lieberman:

I write to supplement my testimony before the Senate Governmental Affairs Committee on February 5, 2002, and to respond to your March 7, 2002 letter regarding that testimony. The specific question you raised refers to a videotape recording of an Enron "all employee" meeting held in 1999.

Typically during "all employee" meetings, Enron's top management would hold an open forum during which they would answer questions from interested Enron employees. In this particular meeting, a question was raised from an employee concerning the company's ESOP. I was called up from the audience, in my capacity as Executive Vice President of Human Resources and Community Relations, to respond to the question. I was not a member of the Administrative Committee of the Enron qualified benefits plans at that time. While I was on the stage, I was then, impromptu, handed another question concerning an employee's investment in the 401(k) plan. I gave a one-word answer intended to be humorous and put the question back to those running the meeting. As the tape demonstrates, my answer was greeted with laughter by those running the meeting and by the audience.

You asked whether my off-hand comment at the meeting is inconsistent with my statement before the Committee concerning the diversification of employees' 401(k) investment holdings. If taken out of context and viewed in light of today's circumstances, my response at the employee meeting in 1999 could be misunderstood. Recognizing this, today I wish I had answered the employees' question differently. However, it is important and only fair, to consider the different times and different contexts in which the two comments were made.

I have enclosed for the Committee's benefit a response to an Enron employee email in a question and answer session called "ethink" a year later in November 2000. The transcript of this exchange reflects that, in response to an employee question concerning why the company could not provide investment forums to educate employees regarding enhancing investment returns, I answered, "We encourage employees to discuss these questions with a financial advisor or tax expert. Because everyone's situation, risk tolerance and diversification goals are different, there is no one solution that works for everyone." This response reflects my views.

I appreciate the opportunity to address your concerns.

Very truly yours,

Cindy K. Olson

Enclosure

cc: The Honorable Fred Thompson
bcc: Gary Slaiman
David Hoffner

J.C. Nickens

## Enron Options

***Featuring Cindy Olson, executive vice president, Human Resources & Community Affairs,***
**November 2nd, 2000 10:00 AM CST**

Transcript Generated on Thursday, December 27, 2001 3:49:18 PM CST

**CINDY OLSON COMMENTS** (POSTED ON 11/02/2000 10:00 A.M.)
The All Employee Stock Option program has been a tremendous benefit for all of us. This program has yielded over 1,000 percent since its inception.

Now we are introducing the new program, EnronOptions, which should prove to be as beneficial to all of us. The program will be effective December 29, 2000.

This is your opportunity to ask me questions about the program, so let's get started.

**KEITH.E.POWER ASKS** (POSTED ON 11/02/2000 10:02 A.M.)
*Hi Cindy - Why can't we provide investment forums to educate employees on methods to enhance returns on this type of benefit - in effect ways to create options on options? A quick example would be the 1995 plan and an option grant of 1,500 shares. Adjusting for splits, today, @ roughly $82 ? per share, those options, if never exercised, are pre-tax in the money (strike of $15.25 / share) approximately $201,000. If you had bought the underlying shares on each yearly vesting date and then margined the same number of shares, today you would control 6,000 shares with a value of $493,500 and you would have margin debt of roughly $57,000. Conceded, there are other factors to consider - the opportunity cost of capital to buy the shares and pay the taxes, using dividend stream to mitigate the cost of carry on the margin debt, etc. However, all of those issues can be modeled with a reasonable degree of probability and can be made to incorporate your personal viewpoint - do you want to be long, do you want to be short, or do you simply want portfolio protection. This is a great program, but it seems like we present it like here's vanilla or here's chocolate - there are lots of flavors out there we are not helping people experience.*

**CINDY OLSON REPLIES**
Thank you for your question. We encourage employees to discuss these questions with a financial advisor or tax expert. Because everyone's situation, risk tolerance and diversification goals are different, there is no one solution that works for everyone.

**LHALSTEA ASKS** (POSTED ON 11/02/2000 10:05 A.M.)
*RE:TUITION REIMBURSEMENT Just wondering if ENRON has ever considered reimbursing 100% for graduate school. Due to the fact that the government taxes graduate school tutition approximately 30% and students are also required to pay the remaining 10% (after ENRON pays 90%), the out of pocket costs can be quite substantial. State graduate schools are approximately $32K for a two year program which would amount to ~13K for out of pocket expenses. This is a substantial amount to fund individually (not to mention single parents who are trying to fund this amount on their own). Furthermore, our competitors ARE funding 100%.*

**CINDY OLSON REPLIES**
We offer employees the most competitive benefits in the industry, overall. We believe that you will get the most out of your education when you participate in some of its cost. This is our philosophy with many of the benefits we provide to employees. Just as the medical plan offers you a flexible menu of choices and subsidizes accompanying costs, so does the educational reimbursement program.

**KELLY.ELLIS ASKS** (POSTED ON 11/02/2000 10:07 A.M.)
*At what price will the options be offered?*

**CINDY OLSON REPLIES**
Thanks for your question. The "strike" price will be the closing price on December 29, 2000, as reported in the NYSE section of the Midwest edition of The Wall Street Journal.

**JUDY.KNEPSHIELD ASKS** (POSTED ON 11/02/2000 10:10 A.M.)
*HR Question: Has Enron developed specific programs for people who need to temporarily scale down their work while they are raising children, going to school or helping an elderly parent while they are ill. I am familiar with the family leave program, but what about fewer hours or fewer days?*

**CINDY OLSON REPLIES**
Yes, we have a part-time program available to employees. Based upon your job and the needs of the business unit, the part-time option may be appropriate for you. I encourage you to approach your supervisor and HR representative to discuss this option. You can find your HR representative in eHROnline.

As you mentioned, Enron does offer time off for family or medical leave. Under the policy, you can take up to 12 weeks of unpaid leave for qualifying events. This leave can be taken all at once or intermittently. If you want to review this policy, it is available on the HR web site.

**KELLY.ELLIS ASKS** (POSTED ON 11/02/2000 10:18 A.M.)
*How many options will be available and will it be based on ones salary?*

**CINDY OLSON REPLIES**
The program may vary slightly based upon international considerations or business unit participation. Eligible employees will find out the specific number of options when they get their award agreements early in 2001.

During the initial year of the EnronOptions program, you will be granted stock options equal to 25 percent of your salary (a rate of 5 percent per year for the 5-year program). The number of stock options you receive is based on two numbers:

1. Your annual base salary on the grant date.
2. The Black-Scholes value for Enron stock on the grant date.

**TEAM_MACKSVILLE ASKS** (POSTED ON 11/02/2000 10:21 A.M.)
*It seems that the number of options that will be granted to each employee is less than the amount we recieved during the last program, by about 1/3, is this correct?*

**CINDY OLSON REPLIES**
Due to Enron's stock price increase and volatility, the Black-Scholes value is higher than it was for the prior program. Therefore, fewer options deliver the same value.

**CTEEL ASKS** (POSTED ON 11/02/2000 10:25 A.M.)
*I am new thé concept of options. Could you please explain how this will work?*

**CINDY OLSON REPLIES**
A stock option gives its owner the right to buy stock at a set price for a specified period of time -- no matter how much the price of the stock fluctuates. As the price of Enron stock increases above the strike price, so does the value of the EnronOption stock options. EnronOptions are an easy way for employees to become owners of Enron.

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March 18, 2002

**Via Email – (darla-cassell@govt-aff.senate.gov)**

Ms. Darla Cassell
Chief Clerk
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Re: Enron Corp.

Dear Ms. Cassell:

We represent Ms. Cindy Olson, Executive Vice President Human Resources, Employee Relations and Building Services, Enron Corporation. We are in receipt of a letter from Senator Joseph I. Lieberman to Ms. Olson, dated March 1, 2002, and I write to respond to the additional questions submitted to the Official Record of the February 5, 2002 hearing.

Set forth below are the questions posed in Senator Lieberman's letter and Ms. Olson's responses:

Q: Were all participants in Enron's 401(k) plan, including rank and file workers and executives, locked out of their accounts during the lockdown?

A: Yes.

Q: In other words, were all participants in Enron's 401(k) plan treated the same during the lockdown?

A: Yes.

Q: Were all stock options for executives and rank and file employees completely exercisable during the lockdown?

Ms. Darla Cassell
Chief Clerk
Committee on Governmental Affairs
March 18, 2002
Page 2

A: Yes. The stock option program is a separate and distinct compensation program.

Q: Could all employees continue to trade stock in their ESOPs during the lockdown?

A: In order to get a distribution from the ESOP, participants were required to submit a request no later than the 20th day of each month for processing at the end of that month. Distribution requests received at Northern Trust by October 20, 2001 were processed prior to the transition. Absent a transition to Hewitt, the next access date would have been November 20, 2001. When the transition ended on November 13, 2001, ESOP participants, through the new administrator, Hewitt, had daily access to their balances and were no longer restricted to monthly processing. Accordingly, the transition had no negative impact on ESOP participants' ability to request and receive distributions.

Please do not hesitate to contact us if you require any additional information.

Respectfully submitted,

David S. Hoffner

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March 18, 2002

**Via Email – (darla-cassell@govt-aff.senate.gov)**

Ms. Darla Cassell
Chief Clerk
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Re: Enron Corp.

Dear Ms. Cassell:

We represent Ms. Mikie Rath, former Benefits Manager, Enron Corporation. We are in receipt of a letter from Senator Joseph I. Lieberman to Ms. Rath, dated March 1, 2002, and write to respond to the additional questions submitted to the Official Record of the February 5, 2002 hearing.

Set forth below are the questions posed in Senator Lieberman's letter and Ms. Rath's responses:

Q: At the time the lockdown began at 3PM CST on 10/26/01, what percentage of the Enron 401(k) plan was in Enron stock?

A: Approximately 26% of the total plan assets were invested in Enron stock as of 10/26/01.

Q: Of this total percentage, what percentage was purchased voluntarily or was stock from a company match that was no longer restricted and could have been sold at anytime by employees?

Ms. Darla Cassell
Chief Clerk
Committee on Governmental Affairs
March 18, 2002
Page 2

A: As of October 26, 2001, approximately 58% of the Enron stock held in the Savings Plan was purchased by participants with employee contributions and could have been sold at anytime. No figures are currently available as to what percentage of Enron stock in the 401(k) plan as a result of company match was unrestricted as a result of participants attaining the age of 50. However, 22% of plan participants were over age 50 and had access to their company match account.

Q: What percentage was the restricted employer match that could not be sold until employees reached age 50?

A: As of October 26, 2001, approximately 42% of the Enron stock held in the Savings Plan resulted from company match. No figures are currently available as to what percentage of this 42% was unrestricted as a result of participants attaining the age of 50. However, 22% of plan participants were over age 50 and had access to their company match account.

Q: Were all participants in Enron's 401(k) plan, including rank and file workers and executives, locked out of their accounts during the lockdown?

A: Yes.

Q: In other words, were all participants in Enron's 401(k) plan treated the same during the lockdown?

A: Yes.

Q: Were all stock options for executives and rank and file employees completely exercisable during the lockdown?

A: Yes. The stock option program is a separate and distinct compensation program.

Q: Could all employees continue to trade stock in their ESOPs during the lockdown?

A: In order to get a distribution from the ESOP, participants were required to submit a request no later than the 20th day of each month for processing at the end of that month. Distribution requests received at Northern Trust by October 20, 2001 were processed prior to the transition. Absent a transition to Hewitt, the next access date would have been November 20, 2001. When the transition ended on November 13, 2001, ESOP participants, through the new administrator, Hewitt, had daily access to their balances and were no longer restricted to monthly processing. Accordingly, the transition had no negative impact on ESOP participants' ability to request and receive distributions.

Ms. Darla Cassell
Chief Clerk
Committee on Governmental Affairs
March 18, 2002
Page 3

Q: Please provide the committee with dates when notices of the lockdown were sent to participants as well as copies of the notices. Please include mail, electronic, telephonic and any other kind of notices that went out to plan participants.

A: Notices of the lockdown were sent by Enron Corp. to Savings Plan participants on the following dates:

1) October 4, 2001 (tri-fold brochure mailing);
2) October 17, 2001 (e-mail);
3) October 23, 2001 (e-mail);
4) October 26, 2001 (e-mail);
5) October 26, 2001 (e-mail);
6) November 8, 2001 (postcard mailed on transition update website and phone line;
7) November 15, 2001 (e-mail on early "live" date).

In addition, on or about October 10, 2001, ESOP participants were notified of the transition by separate letter.

Please do not hesitate to contact us if you require any additional information.

Respectfully submitted,

David S. Hoffner

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(678) 259-6000

Northern Trust

March 26, 2002

Joseph I. Lieberman, Chairman
Committee on Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510-6250

Dear Mr. Lieberman:

This letter is in response to your letter of March 1, 2002, in which you requested additional information concerning the record keeping services that Northern Trust Retirement Consulting, LLC ("NTRC") performed for the Enron Corp. Savings Plan (the "401(k) Plan"). I am pleased to answer your questions. For your convenience, I have restated below each question that you have asked, and my response follows each question.

**Question 1: Were Enron 401(k) participants net buyers or sellers of Enron stock for the two weeks preceding 3PM CST on October 26, 2001? Please provide the committee with the total volume of purchases and sales of Enron stock by 401(k) participants during that period.**

**Response:** Enron 401(k) Plan participants were net buyers of Enron Stock for the two weeks preceding 3:00 PM CST on October 26, 2001. As reflected on Exhibit A to this letter, 401(k) participants purchased a total of $15,770,561.16 worth of Enron Stock and sold a total of $11,553,345.58 worth of Enron Stock during the two-week trading period ending on October 26, 2002. Exhibit A demonstrates that 401(k) Plan participant "Buyers" outnumbered "Sellers" by over a two (501) to one (224) margin for this period.

**Question 2: Were all participants in Enron's 401(k) plan, including rank and file workers and executives, locked out of their accounts during the lockdown? In other words, were all participants in Enron's 401(k) plan treated the same during the lockdown?**

**Response:** Commencing at 3:00 PM CST on October 26, 2001, trading activity was suspended for all 401(k) Plan participants, including all "rank and file workers" and executives. NTRC was removed as the recordkeeper effective as of October 31, 2001. It is my understanding that Enron and Hewitt Associates, the successor recordkeeper of the 401(k) Plan, ended the suspension of 401(k) Plan participant trading activity on November 12, 2001. During the portion of the suspension period that NTRC was recordkeeper (October 26 – October 31), all 401(k) Plan participants were treated the same. My understanding is that all 401(k) Plan participant trading activity continued to be suspended with Hewitt Associates as the successor recordkeeper through November 12, 2001.

Northern Trust

March 26, 2002
Joseph I. Lieberman, Chairman
Page 2

**Question 3: Were all stock options for executives and rank and file employees completely exercisable during the lockdown? Could all employees continue to trade stock in their ESOPs during the lockdown?**

**Response:** NTRC did not administer any Enron Corp. stock option program. Therefore, NTRC does not have any information whether or not employees could exercise stock options during the period October 26, 2001 through November 12, 2001.

With respect to the Enron Corp. Employee Stock Ownership Plan ("ESOP"), this plan was valued on a monthly basis, not a daily basis like the 401(k) Plan. Under the ESOP, all participants could request a distribution from the ESOP by the 20th day of any month. This ESOP rule applied uniformly to all participants, including all "rank and file" and executive participants.

**Question 4: Bill Miller of IBEW alleged in his testimony that on September 27, 2001 some of PGE's members could not access their 401(k) accounts. He also claims employees received notification that they would be locked out of their accounts beginning on October 19, 2001. Did PGE employees have access to their 401(k) accounts between September 27, 2001 and 3PM CST on October 26, 2001? Please provide the committee with any documentation that verifies your claim.**

**Response:** The records of NTRC reflect that all participants in the 401(k) Plan had access to their accounts on September 27, 2001. For your information, participants in the 401(k) Plan had access to their account in three different ways: (1) via the Enron Web Page (www.rsweb.com/61045), (2) via the Interactive Voice Response System (1-800-316-7526) and (3) through a toll free phone representative Monday – Friday (1-800-316-7526, during the hours of 9:00 AM – 6:00 PM EST). The 401(k) Plan Summary Plan Description (copy of page 8 is attached as Exhibit B) also states that participants could call the Enron Benefits Department at 713-853-7979 or toll free at 1-800-332-7979.

It is our understanding that Enron and/or Hewitt Associates prepared all material regarding the suspension of participant trading activity and notified 401(k) plan participants. NTRC was not asked to provide this service and it neither prepared nor sent notices to 401(k) Plan participants regarding the transition from NTRC to Hewitt Associates. With respect to Mr. Miller's statement that employees received notification that they would be locked out of their accounts beginning on October 19, 2001, please see the attached Exhibit C. Exhibit C is an e-mail from "ID for Human Resources News" to all PGE employees that we obtained in January of 2002. This e-mail states that the 401(k) Plan will be going through a transition period of approximately one month, beginning on October 19, 2001 and that Enron will mail a packet of detailed information to all participants the week of October 1. Exhibit D sets forth what we

Northern Trust

March 26, 2002
Joseph I. Lieberman, Chairman
Page 3

understand to be the mailing that occurred during the early part of October. As stated in this brochure, the transition period did begin on October 19 for certain transactions, but October 26 was the last date for investment fund balance transfers and allocations. From this correspondence, it appears that the PGE employees received notice that a transition period was to commence on October 19, 2001, but that the suspension of participant trading activity for investment fund balance transfers and allocations, including transfers in or out of the 401(k) Plan's Enron Stock Fund, was set to begin on October 26, 2001. In fact, this is consistent with how the PGE participants traded in the Enron Stock Fund under the 401(k) Plan for the period September 27, 2001 – October 26, 2001. Exhibit E demonstrates that PGE participants did have access to their accounts between September 27, 2001 and 3:00 PM central time on October 26, 2001. The attached Exhibit E shows that the PGE 401(k) participants purchased a total of $2,541,238.34 worth of Enron stock for this period and sold a total of $2,251,564.49 worth of Enron stock for this period. NTRC has also determined that on September 27, 2001, seven PGE participants had trading activity in their non-Enron stock portion of their accounts. Please let me know if you want our system to produce the non-Enron stock trading activity in all PGE accounts for the period September 28, 2001 – October 26, 2001.

I appreciate the opportunity to provide you this information. I would be happy to provide additional information in the future if there are other issues on which I can be of assistance.

Very truly yours,

Joseph P. Szathmary

**EXHIBIT A**

**Enron Corp. Savings Plan**
**Tranfer Activity in the Enron Stock Fund**
**For the Period of 9/27/01 - 10/31/01**

*CONFIDENTIAL TREATMENT REQUESTED*

**Total Participants in the Plan as of 10/31/01: 15,339**

| | 10/15/2001 | 10/16/2001 | 10/17/2001 | 10/18/2001 | 10/19/2001 | 10/22/2001 | 10/23/2001 |
|---|---|---|---|---|---|---|---|
| Total Amount Sold | (856,889.76) | (71,518.54) | (504,168.88) | (3,453,735.29) | (1,121,089.53) | (1,049,053.08) | (626,643.59) |
| Total Amount Bought | 1,303,750.85 | 740,845.52 | 656,769.57 | 255,958.66 | 1,507,599.05 | 2,292,074.70 | 1,830,696.37 |
| Net Activity | 446,861.09 | 669,326.98 | 152,600.69 | (3,197,776.63) | 386,509.52 | 1,243,021.62 | 1,204,052.78 |
| | | | | | | | |
| Number of Sell Request | 12 | 10 | 10 | 29 | 22 | 33 | 17 |
| Number of Buy Request | 20 | 10 | 9 | 11 | 29 | 56 | 63 |
| Total Number of Transfers | 32 | 20 | 19 | 40 | 51 | 89 | 80 |

| | 10/24/2001 | 10/25/2001 | 10/26/2001 | 10/29/2001 | 10/30/2001 | 10/31/2001 |
|---|---|---|---|---|---|---|
| Total Amount Sold | (526,049.61) | (278,775.67) | (3,065,421.63) | 0 | 0 | 0 |
| Total Amount Bought | 2,462,429.98 | 3,226,961.81 | 1,493,474.65 | 0 | 0 | 0 |
| Net Activity | 1,936,380.37 | 2,948,186.14 | (1,571,946.98) | - | - | - |
| | | | | | | |
| Number of Sell Request | 31 | 17 | 43 | 0 | 0 | 0 |
| Number of Buy Request | 100 | 86 | 117 | 0 | 0 | 0 |
| Total Number of Transfers | 131 | 103 | 160 | 0 | 0 | 0 |

**EXHIBIT B**

8

## An example of a Directed Transfer:

John's account looks like this before any changes:

| | |
|---|---|
| **Enron Corp. Stock Fund** | **$15,000** |
| **Fidelity Magellan** | **2,000** |
| **Vanguard S&P 500** | **5,000** |
| **TOTAL BALANCE** | **$22,000** |

**John wants to move $7,000 out of his Enron Corp. Stock Fund and invest this money in Fidelity Growth & Income (30%); in the PIMCO Total Return Fund II (20%); and in T. Rowe Price Small Cap Fund (50%).**

**The next day his account will look something like this*:**

| | |
|---|---|
| **Enron Corp. Stock Fund** | **$8,000** |
| **Fidelity Magellan** | **2,000** |
| **Vanguard S&P 500** | **5,000** |
| **Fidelity Growth & Inc. (30% of $7,000)** | **2,100** |
| **PIMCO Total Return II (20% of $7,000)** | **1,400** |
| **T. Rowe Price Small Cap (50% of $7,000)** | **3,500** |
| **TOTAL BALANCE** | **$22,000** |

**Remember dollars out of one fund; percentages in the new investment choices.**

**Dollars transferred may not be exact due to actual prices at the close of business.*

*For Forms, Transactions or Questions:*

*Savings Plan 1-800-316-7526 or*

*https://www.rsweb.com/61045*

*Enron Benefits Dept 713-853-7979 or 1-800-332-7979*

## An example of a Resultant Transfer:

This is the type of fund balance transfer most participants are familiar with.

Mary's account looks like this before any changes:

| | |
|---|---|
| **Enron Corp. Stock Fund** | **$15,000** |
| **Fidelity Magellan** | **2,000** |
| **Vanguard S&P 500** | **5,000** |
| **TOTAL BALANCE** | **$22,000** |

Mary wants to rebalance her investment funds and add a few more funds. She wants to hold 40% in her Enron Corp. Stock Fund, 10% in Fidelity Magellan, 30% in the Vanguard S&P 500 fund, 10% in Fidelity Growth & Income and 10% in PIMCO Total Return Fund II.

The next day her account will look something like this*:

| | |
|---|---|
| **Enron Corp. Stock Fund (40% of $22,000)** | **$8,800** |
| **Fidelity Magellan (10% of $22,000)** | **2,200** |
| **Vanguard S&P 500 (30% of $22,000)** | **6,600** |
| **Fidelity Growth & Inc. (10% of $22,000)** | **2,200** |
| **PIMCO Total Return II (10% of $22,000)** | **2,200** |
| **TOTAL BALANCE** | **$22,000** |

Remember percentages of total balance in the new investment choices.

**Dollars transferred may not be exact due to actual prices at the close of business.*

**EXHIBIT C**



## ID for Human Resources News - Enron 401(k) Savings Plan

From: ID for Human Resources News
To: ALL PGE EMPLOYEES
Date: 09/27/2001 5:04 PM
Subject: Enron 401(k) Savings Plan

**HRNews Online**

**To: All Employees**
**From: Human Resources**
**Date: September 27, 2001**
**Re: Enron 401(k) Savings Plan**

Enron Corp. has contracted with Hewitt Associates to be the new trustee and record keeper for the Enron 401(k) Savings Plan **(replacing Northern Trust).**

**To ensure that records and individual accounts are converted accurately, a transition period of approximately one-month will begin Oct 19. Enron Corp is mailing a packet of detailed information to all Enron Savings Plan participants the week of October 1st.**

There are <u>no changes</u> being made in the investment elections, plan features or plan design. A transition period is necessary whenever a company changes 401(k) administrators.

During the transition period, participants can continue to make contributions and loan deductions, but are not able to transfer funds among investment options, request a loan, request a withdrawal or close an account.

We realize you may have questions. Most of them will be addressed in the information Enron Corp is sending participants, so please read carefully the materials you receive.

Thank you.

**EXHIBIT D**

## TRA~~N~~SITION ACTION ITEMS

balances will remain invested during the transition.

### ask...

During the transition period, you will NOT have access to your funds. Your fund balances will remain invested in the market based on your fund choices as of 3:00 PM October 26. All activity must be completed by the dates shown below.

### why...

Fund balances of approximately $1.4 billion for 24,000 participants will be moved and balanced. Each record must be correct for every account, i.e. before-tax, after-tax, company match, etc. Once the records are balanced, investment returns and November payroll contributions will be added.

**october 19** 3:00 PM CST

*Last Date For:*

- Loan Requests
- In-Service Withdrawals & Distributions
- Hardship Withdrawals
- Loan Payoffs
- Rollovers into the Plan
- SDA Schwab Fund Liquidation

**october 26** 3:00 PM CST

*Last Date For:*

- Investment Fund Balance Transfers/Allocation Changes
- Contribution Rate Changes

**november 20** 8:00 AM CST

***TRANSITION ENDS...***
**Savings Plan system opens with all the great new features!**

### No Excuses...

The Savings Plan is a great benefit provided by Enron. It allows you to save for the future by making contributions directly from your paycheck on a pre-tax basis—before any federal or state income taxes are deducted. The company match... it's like receiving free money!

For complete details on the Plan, refer to the Money-in-Motion guide on the Enron Intranet site or contact a Benefits Service Representative.

# CONNECT

**1** Internet
Access your Savings Plan through
enron: benefits.enron.com
home: http://resources.hewitt.com/enron

**2** Voice Response System
Access your Savings Plan 24/7 by calling (800) 332-7979, option 3.
Benefits Service Representatives are available Monday through Friday, 8:30 AM to 5:00 PM CST.

what's new | what's coming | what's the same


Enron Corp. Savings Plan Changes

money in motion

ENRON

## What's NEW?

In late November, Hewitt Associates will become our new administrator for the Enron Corp. Savings Plan, providing improved customer service and quicker processing of your requests. Hewitt is recognized as a leader in benefit plan administration, with a reputation of providing quality service to many Fortune 500 companies.

### Fund Changes

On November 20, the Fidelity Freedom™ Funds will replace the Vanguard LifeStrategy® Funds. These new funds invest in a wide variety of underlying Fidelity mutual funds to provide you with broader diversification. And speaking of diversification - all investment funds will now be listed by asset class in order of risk factor – from the least risky to the most risky.

| YOUR ACCOUNT BALANCE WILL MOVE FROM THESE INVESTMENT OPTIONS ... | | ... TO THESE OPTIONS WITH SIMILAR INVESTMENT OBJECTIVES |
|---|---|---|
| *Vanguard LifeStrategy Conservative Growth | → | Fidelity Freedom 2000 |
| Vanguard LifeStrategy Moderate Growth | → | Fidelity Freedom 2010 |
| Vanguard LifeStrategy Growth Portfolio | → | Fidelity Freedom 2020 |

*default fund

### Loans, Withdrawals and Distributions

There may be a time when it is necessary for you to use a portion of your funds; so we've made it simpler for you to make withdrawals and take loans. There's an easy paperless process for in-service withdrawals and distributions (now offered on a daily basis). The loan administration fee will be $35.

### New Website Features

- Personal Rate of Return
- Reduced Self-Directed Account (SDA) fees
- Retirement Report Card – coming soon
- Password Hint – No more hunting for that PIN; assign your own and use the hint to help you remember

## What's COMING?

A GREAT NEW FEATURE FOR ACTIVE EMPLOYEES

*Will my finances support my long-term goals?*

*What funds should I invest in, and how much should I put in each fund?*

dream.

### Retirement Report Card

In early December, Enron will offer you an online investment education and advice tool that will help turn your financial dreams into reality. The new mPower website will feature a personalized Retirement Report Card to help you quickly determine your financial readiness for the future. mPower is the nation's leading provider of online retirement planning advice. mPower takes the guesswork out of investing, and in just a few minutes can provide personalized and fund-specific answers to important questions.

WATCH FOR MORE INFORMATION ON THIS POWERFUL NEW FEATURE.

## What's THE SAME?

- The same great benefit
- Easy access through the web or voice response system
- Benefit service representatives to help you when you need personal assistance
- One phone number to remember for

EXHIBIT D

## IMPROVED SELF-DIRECTED ACCOUNT SERVICES

Hewitt Financial Services, in partnership with CSFBdirect, will replace Charles Schwab as the brokerage firm providing this service. Backed by Credit Suisse First Boston, CSFBdirect offers you a comprehensive line of brokerage products, including extended-hours trading and reduced commissions for online stock trades. However, there are some minor changes that you need to be aware of listed below.

### Have a Current Schwab Account? READ ON!

At 3:00 PM CST on October 19, your Schwab Personal Choice Account will be frozen until 8:00 AM CST on November 20 when the transition period ends.

### Don't Panic!

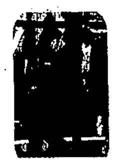
Your holdings as of market close on October 19 will NOT be liquidated! They will remain invested and moved in kind to CSFBdirect.

#### *Schwab Mutual Funds No Longer Available*

If you are invested in Schwab's family of mutual funds, you must choose an alternative investment before the transition period begins. If you do not choose an alternative, your funds will be liquidated and transferred to the Money Market Fund and will remain there until the transition period ends.

#### *SDA Contribution Allocations No Longer Allowed*

Effective November 20, all contribution allocations must be made among the core funds. If you have not changed your allocation by 3:00 PM CST on October 26, your funds will be allocated to the Fidelity Freedom 2000 Fund.



Current Schwab account holders will receive a Welcome Kit in November. For information visit www.hewitt.csfbdirect.com.

To establish online access to your CSFBdirect account, you must call 1-800-890-3200 after November 12.

**EXHIBIT E**

**Enron Corp. Savings Plan**
**PGE Participants Tranfer Activity in the Enron Stock Fund**
**For the Period of 9/27/01 - 10/31/01**

***CONFIDENTIAL TREATMENT REQUESTED***

**Total PGE Participants in the Plan as of 10/31/01: 3,306**

| | 09/27/2001 | 09/28/2001 | 10/01/2001 | 10/02/2001 | 10/03/2001 | 10/04/2001 | 10/05/2001 | 10/08/2001 | 10/09/2001 | 10/10/2001 | 10/11/2001 | 10/12/2001 | 10/15/2001 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total Amount Sold | (621.33) | (127,199.22) | (54,850.27) | (288,099.30) | - | (22,519.41) | (75,431.95) | (49,679.24) | (38,679.23) | (247,076.52) | (138,640.98) | (344,858.35) | (33,682.03) |
| Total Amount Bought | 189,750.06 | 22,863.58 | 46,639.32 | 100,771.67 | 182,436.46 | 167,737.58 | 10,161.33 | 1,133.85 | 1,791.48 | 131,449.55 | 320,780.99 | 84,993.79 | 110,426.37 |
| Net Activity | 189,128.73 | (104,335.64) | (8,210.95) | (187,327.63) | 182,436.46 | 145,218.17 | (65,270.62) | (48,545.39) | (36,887.75) | (115,626.97) | 182,140.01 | (259,864.56) | 76,744.34 |
| | | | | | | | | | | | | | |
| Number of Sell Request | 1 | 4 | 3 | 3 | 0 | 3 | 2 | 4 | 1 | 3 | 5 | 3 | 3 |
| Number of Buy Request | 6 | 2 | 3 | 1 | 7 | 8 | 1 | 1 | 1 | 6 | 6 | 5 | 5 |
| Total Number of Transfers | 7 | 6 | 6 | 4 | 7 | 11 | 3 | 5 | 2 | 9 | 11 | 8 | 8 |

| | 10/16/2001 | 10/17/2001 | 10/18/2001 | 10/19/2001 | 10/22/2001 | 10/23/2001 | 10/24/2001 | 10/25/2001 | 10/26/2001 | 10/29/2001 | 10/30/2001 | 10/31/2001 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total Amount Sold | (18,882.27) | (133.38) | (182,373.75) | (125,506.31) | (29,806.75) | - | (100,871.23) | (32,510.32) | (340,142.65) | 0 | 0 | 0 |
| Total Amount Bought | 26,150.17 | 177,864.73 | - | 10,046.93 | 135,993.22 | 398,672.57 | 43,121.01 | 238,493.85 | 139,959.83 | 0 | 0 | 0 |
| Net Activity | 7,267.90 | 177,731.35 | (182,373.75) | (115,459.38) | 106,186.47 | 398,672.57 | (57,750.22) | 205,983.53 | (200,182.82) | - | - | - |
| | | | | | | | | | | | | |
| Number of Sell Request | 2 | 1 | 2 | 6 | 4 | 0 | 8 | 4 | 3 | 0 | 0 | 0 |
| Number of Buy Request | 2 | 2 | 0 | 1 | 5 | 10 | 4 | 4 | 4 | 0 | 0 | 0 |
| Total Number of Transfers | 4 | 3 | 2 | 7 | 9 | 10 | 12 | 8 | 7 | 0 | 0 | 0 |

**Responses of Catheryn Graham to Questions Submitted to Catheryn Graham by Ranking Member Fred Thompson**

"Retirement Insecurity: 401(k) Crisis at Enron"

February 5, 2002

**Panel 2 - Catheryn Graham, Hewitt Associates, Enron's Subsequent Record Keeper:**

1. Were Enron 401(k) participants net buyers or sellers of Enron Stock the two weeks following 11/13/2001? Please provide the committee with the total volume of purchases and sales of Enron stock by 401(k) participants during that period.

**Response**: Enron participants were net sellers. Hewitt will provide Daily Transaction Activity Reports in hard copy for the plan for the period of November 13, 2001 to November 30, 2001 under separate cover. These reports will illustrate the daily activity, for example transfers and payments, by investment option within the 401(k) plan.

2. Were all participants in Enron's 401(k) plan, including rank and file workers and executives, locked out of their accounts during the lockdown? In other words, were all participants in Enron's 401(k) plan treated the same during the lockdown?

**Response:** No participant in Enron's 401(k) plan, rank and file workers or executives, could access their 401(k) account from the close of trading on October 26, 2001 to the opening of trading on November 13, 2001. All participant's in Enron's 401(k) plan were treated the same.

3. Were all stock options for executives and rank and file employees completely exercisable during the lockdown? Could all employees continue to trade stock in their ESOPs during the lockdown?

**Response:** Hewitt Associates does not perform administration of the Enron options program. I have no knowledge about the Enron option program. Participants in Enron's ESOP were also unable to trade in the ESOP during the blackout period from the close of trading on October 26, 2001 to the morning of November 13, 2001.

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/13/2001 To 11/13/2001

Run Date: 11/13/2001
Page: 1

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Harnandes | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| ACTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 0.00 | 0.00 | 3,477.43 | 158,341.82 | 485.49 |
| Payments-Cash | 268,726.18 | 0.00 | ( 256,873.89) | ( 8,443.00) | 0.00 |
| New Loans | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 268,726.18 | 0.00 | ( 253,396.46) | 149,898.82 | 485.49 |
| Net Activity | 268,726.18 | 0.00 | ( 253,396.46) | 149,898.82 | 485.49 |
| NAV/Shr Price for Day | | | 160.667134 | 125.980206 | 11.809450 |
| Unit Purchase/Sale | | | ( 1,577.151) | 1,189.860 | 41.110 |
| Total Record Keeping Units | | 16,875,067.760 | 1,395,858.029 | 138,339.819 | 846,795.212 |
| Total Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/13/2001 To 11/13/2001

Run Date: 11/13/2001
Page: 2

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | ( 2,741.61) | ( 321,659.80) | 0.00 | 68.22 | 0.00 |
| Payments-Cash | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| New Loans | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | ( 2,741.61) | ( 321,659.80) | 0.00 | 68.22 | 0.00 |
| Net Activity | ( 2,741.61) | ( 321,659.80) | 0.00 | 68.22 | 0.00 |
| NAV/Shr Price for Day | 12.829838 | 12.629842 | 202.677965 | 260.939739 | 94.122563 |
| Unit Purchase/Sale | ( 213.690) | ( 25,468.235) | | 0.261 | |
| Total Record Keeping Units | 2,874,744.652 | 2,920,701.847 | 75,638.444 | 123,431.000 | 334,215.316 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/13/2001 To 11/13/2001

Run Date: 11/13/2001
Page: 3

| | Title | Phone | Fax |
|---|---|---|---|
| TO: Wilmington Trust, Sue Sobocinski | Wilmington Trust | (302) 651-8779 | (302) 651-1449 |
| FROM: Hewitt Associates LLC | | | |
| Stacey Fratus | Morning Contact | (847) 295-5000 | (847) 883-8100 |
| Monica Hernandez | Morning Contact | (847) 295-5000 | (847) 883-8100 |

| ACTIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 167,114.03 | ( 708.44) | ( 8,527.25) | ( 5,264.48) | 60.77 |
| Payments-Cash | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| New Loans | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 167,114.03 | ( 708.44) | ( 8,527.25) | ( 5,264.48) | 60.77 |
| Net Activity | 167,114.03 | ( 708.44) | ( 8,527.25) | ( 5,264.48) | 60.77 |
| NAV/Shr Price for Day | 84.838133 | 270.794165 | 250.070080 | 298.121235 | 90.462862 |
| Unit Purchase/Sale | 1,970.030 | ( 2.616) | ( 34.099) | ( 17.658) | 0.671 |
| Total Record Keeping Units | 328,954.099 | 138,439.027 | 153,662.278 | 176,064.347 | 394,262.620 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

HEWITT  007

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/13/2001 To 11/13/2001

Run Date: 11/13/2001
Page: 4

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Fidelity OTC Portfolio 55898-0-249012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 868.68 | ( 93.24) | 3,712.98 | 1,259.75 | 4,147.64 |
| Payments-Cash | 0.00 | ( 3,153.58) | 0.00 | 0.00 | ( 255.71) |
| New Loans | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 868.68 | ( 3,246.82) | 3,712.98 | 1,259.75 | 3,891.93 |
| Net Activity | 868.68 | ( 3,246.82) | 3,712.98 | 1,259.75 | 3,891.93 |
| NAV/Shr Price for Day | 244.385384 | 142.443713 | 105.069326 | 124.495553 | 64.865136 |
| Unit Purchase/Sale | 3.554 | ( 22.793) | 35.338 | 10.118 | 60.000 |
| Total Record Keeping Units | 100,521.288 | 73,472.135 | 100,788.427 | 226,318.186 | 2,490,938.220 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/13/2001 To 11/13/2001

Run Date: 11/13/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633183-001 |
|---|---|---|
| Before-Tax | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 |
| | | |
| Payroll Loan Payments | | |
| Principal | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 |
| | | |
| Manual Loan Payments | | |
| Principal | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 |
| | | |
| Rollovers From ESOP | 0.00 | 0.00 |
| Transfers | ( 541.99) | 0.00 |
| Payments-Cash | 0.00 | 0.00 |
| New Loans | 0.00 | 0.00 |
| Net Fund Activity | ( 541.99) | 0.00 |
| | | |
| Net Activity | ( 541.99) | 0.00 |
| NAV/Shr Price for Day | 158.335005 | |
| Unit Purchase/Sale | ( 3.423) | |
| Total Record Keeping Units | 99,280.640 | |
| Total Closing Value | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/13/2001 To 11/13/2001

Run Date: 11/13/2001
Page: 6

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| Stock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| Enron Corp. Stock | 9.990000 | ( 29) | ( 289.71) | ( 884.44) | ( 4.466000) |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/14/2001 To 11/14/2001

Run Date: 11/14/2001
Page: 1

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 0.00 | 0.00 | 130,875.95 | 235,514.09 | 36,592.18 |
| Payments-Cash | 431,134.64 | 0.00 | ( 290,790.25) | 0.00 | ( 3,609.58) |
| Forfeitures | 383.31 | 0.00 | 0.00 | 0.00 | 0.00 |
| New Loans | 17,070.00 | 17,070.00 | ( 1,105.79) | ( 5,601.31) | ( 310.75) |
| Net Fund Activity | 448,587.95 | 17,070.00 | ( 161,020.09) | 229,912.78 | 32,671.85 |
| Net Activity | 448,587.95 | 17,070.00 | ( 161,020.09) | 229,912.78 | 32,671.85 |
| NAV/Shr Price for Day | | | 160.694266 | 125.416270 | 11.789407 |
| Unit Purchase/Sale | | 17,070.000 | ( 1,002.027) | 1,833.197 | 2,771.288 |
| Total Record Keeping Units | | 16,892,137.760 | 1,394,856.001 | 140,173.016 | 849,566.501 |
| Total Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/14/2001 To 11/14/2001

Run Date: 11/14/2001
Page: 2

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | <br>Morning Contact<br>Morning Contact | <br>(847)295-5000<br>(847)295-5000 | <br>(847)883-8100<br>(847)883-8100 |

| ACTIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 1,620.82 | ( 33,036.80) | 50,724.66 | ( 7,097.93) | ( 23,969.94) |
| Payments-Cash | ( 1,790.03) | 0.00 | ( 3,140.82) | ( 8,606.11) | ( 8,589.33) |
| Forfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| New Loans | ( 305.01) | ( 199.36) | ( 206.92) | ( 99.51) | ( 1,097.68) |
| Net Fund Activity | ( 474.22) | ( 33,236.16) | 47,376.92 | ( 15,803.55) | ( 33,656.75) |
| Net Activity | ( 474.22) | ( 33,236.16) | 47,376.92 | ( 15,803.55) | ( 33,656.75) |
| NAV/Shr Price for Day | 12.819825 | 12.629829 | 202.814440 | 261.046547 | 93.754496 |
| Unit Purchase/Sale | ( 36.991) | ( 2,631.561) | 233.597 | ( 60.539) | ( 358.988) |
| Total Record Keeping Units | 2,874,707.661 | 2,918,070.286 | 75,872.042 | 123,370.461 | 333,856.328 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/14/2001 To 11/14/2001

Run Date: 11/14/2001
Page: 3

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | (27,436.73) | 39,750.54 | (7,377.16) | 24,470.81 | (51,321.98) |
| Payments-Cash | (19,508.08) | (7,762.79) | (31,054.14) | (21,804.39) | (183.22) |
| Forfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| New Loans | (298.61) | (2,263.01) | (99.30) | (1,422.25) | 0.00 |
| Net Fund Activity | (47,243.42) | 29,724.74 | (38,530.60) | 1,244.17 | (51,505.20) |
| Net Activity | (47,243.42) | 29,724.74 | (38,530.60) | 1,244.17 | (51,505.20) |
| NAV/Shr Price for Day | 85.005323 | 270.861586 | 250.698353 | 297.779015 | 90.829871 |
| Unit Purchase/Sale | (555.770) | 109.741 | (153.693) | 4.178 | (567.051) |
| Total Record Keeping Units | 328,398.329 | 138,608.758 | 153,508.585 | 176,068.525 | 393,695.569 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/14/2001 To 11/14/2001

Run Date: 11/14/2001
Page: 4

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Fidelity OTC Portfolio 55898-0-249012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 2,689.59 | ( 214.74) | ( 29,387.25) | ( 20,952.91) | ( 270,746.13) |
| Payments-Cash | 0.00 | 0.00 | ( 274.66) | ( 18,529.24) | ( 3,313.81) |
| Forfeitures | 0.00 | 0.00 | 0.00 | 0.00 | ( 383.31) |
| New Loans | 0.00 | 0.00 | ( 2,263.05) | ( 1,797.45) | 0.00 |
| Net Fund Activity | 2,689.59 | ( 214.74) | ( 31,924.96) | ( 41,279.60) | ( 274,443.25) |
| Net Activity | 2,689.59 | ( 214.74) | ( 31,924.96) | ( 41,279.60) | ( 274,443.25) |
| NAV/Shr Price for Day | 243.426949 | 142.810884 | 105.604038 | 125.136859 | 64.359651 |
| Unit Purchase/Sale | 11.048 | ( 1.503) | ( 302.308) | ( 329.875) | ( 4,264.213) |
| Total Record Keeping Units | 100,532.337 | 73,470.631 | 100,486.119 | 225,988.310 | 2,486,655.067 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/14/2001 To 11/14/2001

Run Date: 11/14/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633183-001 |
|---|---|---|---|
| Before-Tax | | 0.00 | 0.00 |
| After-Tax | | 0.00 | 0.00 |
| Company Match | | 0.00 | 0.00 |
| Total Contributions | | 0.00 | 0.00 |
| Payroll Loan Payments | | | |
| Principal | | 0.00 | 0.00 |
| Interest | | 0.00 | 0.00 |
| Manual Loan Payments | | | |
| Principal | | 0.00 | 0.00 |
| Interest | | 0.00 | 0.00 |
| Total Loan Payments | | 0.00 | 0.00 |
| Rollovers From ESOP | | 0.00 | 0.00 |
| Transfers | ( | 50,697.08) | 0.00 |
| Payments-Cash | ( | 12,178.38) | 0.00 |
| Forfeitures | | 0.00 | 0.00 |
| New Loans | | 0.00 | 0.00 |
| Net Fund Activity | ( | 62,875.46) | 0.00 |
| Net Activity | ( | 62,875.46) | 0.00 |
| NAV/Shr Price for Day | | 149.701101 | |
| Unit Purchase/Sale | ( | 420.006) | |
| Total Record Keeping Units | | 98,860.633 | |
| Total Closing Value | | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/14/2001 To 11/14/2001

Run Date: 11/14/2001
Page: 6

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| Stock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| Enron Corp. Stock | 9.510000 | ( 123) | ( 1,218.93) | ( 9,873.87) | ( 18.939000) |

Run Date: 11/15/2001
Page: 1

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/15/2001 To 11/15/2001

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Pratus<br>Monica Hernandez | <br>Morning Contact<br>Morning Contact | <br>(847)295-5000<br>(847)295-5000 | <br>(847)883-8100<br>(847)883-8100 |

| ACTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | (2,605,778.37) | 0.00 | 243,384.50 | 77,707.28 | 57,130.40 |
| After-Tax | (122,700.20) | 0.00 | 16,287.86 | 3,825.36 | 3,891.93 |
| Company Match | (966,681.99) | 0.00 | 0.00 | 0.00 | 0.00 |
| Profit Sharing | (98,445.59) | 0.00 | 10,977.01 | 717.15 | 10,652.60 |
| Total Contributions | (3,793,606.15) | 0.00 | 270,649.37 | 82,249.79 | 71,674.93 |
| Payroll Loan Payments | | | | | |
| Principal | (9,354.71) | (9,354.71) | 980.44 | 200.41 | 26.52 |
| Interest | (3,005.43) | 0.00 | 336.20 | 127.17 | 11.18 |
| Total Loan Payments | (12,360.14) | (9,354.71) | 1,316.64 | 327.58 | 37.70 |
| Total Payroll | (3,707,520.70) | (9,354.71) | 260,989.00 | 81,860.22 | 61,060.03 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | (93,103.08) | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 0.00 | 0.00 | 1,281,462.48 | 74,967.06 | (408,695.55) |
| Payments-Cash | 89,962.92 | (682.78) | (33,283.23) | 0.00 | 0.00 |
| Forfeitures | 194.44 | 0.00 | 0.00 | 0.00 | 0.00 |
| New Loans | 39,780.00 | 39,780.00 | (2,082.57) | 0.00 | 0.00 |
| Conversion | 89.95 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | (3,769,042.06) | 29,742.51 | 1,518,062.69 | 157,544.43 | (336,982.92) |
| Net Activity | (3,769,042.06) | 29,742.51 | 1,518,062.69 | 157,544.43 | (336,982.92) |
| NAV/Shr Price for Day | | | 160.721406 | 124.160781 | 11.749365 |
| Unit Purchase/Sale | | 29,742.510 | 9,445.304 | 1,268.874 | (28,680.946) |
| Total Record Keeping Units | | 16,921,880.270 | 1,404,301.306 | 141,441.891 | 820,885.554 |
| Total Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/15/2001 To 11/15/2001

Run Date: 11/15/2001
Page: 2

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| ACTIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| ontributions | | | | | |
| efore-Tax | 82,401.45 | 125,079.89 | 56,973.16 | 87,731.15 | 108,664.79 |
| fter-Tax | 3,815.53 | 4,808.98 | 3,110.54 | 5,019.54 | 3,621.61 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| rofit Sharing | 5,227.89 | 11,059.46 | 200.38 | 111.70 | 5,115.84 |
| otal Contributions | 91,444.87 | 140,948.33 | 60,284.08 | 92,862.39 | 117,402.24 |
| ayroll Loan Payments | | | | | |
| rincipal | 142.78 | 956.33 | 150.94 | 658.18 | 459.50 |
| nterest | 52.44 | 262.43 | 62.25 | 154.49 | 150.65 |
| otal Loan Payments | 195.22 | 1,218.76 | 213.19 | 812.67 | 610.15 |
| otal Payroll | 86,412.20 | 131,107.63 | 60,296.89 | 93,563.36 | 132,896.55 |
| anual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ransfers | (461,010.03) | 34,900.83 | (35,020.59) | (5,677.52) | (39,442.07) |
| ayments-Cash | (1,260.41) | (4,895.69) | 0.00 | (8,468.88) | 0.00 |
| orfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ew Loans | 0.00 | (24,035.00) | 0.00 | 0.00 | 0.00 |
| onversion | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| et Fund Activity | (370,630.35) | 148,137.23 | 25,476.68 | 79,528.66 | 78,570.32 |
| et Activity | (370,630.35) | 148,137.23 | 25,476.68 | 79,528.66 | 78,570.32 |
| AV/Shr Price for Day | 12.779813 | 12.619817 | 202.403122 | 260.939157 | 93.570409 |
| nit Purchase/Sale | (29,001.235) | 11,738.460 | 125.870 | 304.778 | 839.691 |
| otal Record Keeping Units | 2,845,706.426 | 2,929,808.746 | 75,997.913 | 123,675.240 | 334,696.019 |
| otal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/15/2001 To 11/15/2001

Run Date: 11/15/2001
Page: 3

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | 208,916.31 | 126,938.99 | 136,536.91 | 194,460.22 | 91,830.95 |
| After-Tax | 7,215.52 | 6,669.89 | 8,611.74 | 8,795.34 | 2,031.34 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Profit Sharing | 3,333.80 | 243.34 | 953.87 | 8,501.85 | 6,469.73 |
| Total Contributions | 219,465.63 | 133,852.22 | 146,102.52 | 211,757.41 | 100,332.02 |
| Payroll Loan Payments | | | | | |
| Principal | 639.23 | 270.50 | 199.48 | 639.77 | 427.11 |
| Interest | 219.62 | 73.27 | 75.55 | 232.54 | 129.96 |
| Total Loan Payments | 858.85 | 343.77 | 275.03 | 872.31 | 557.07 |
| Total Payroll | 216,990.68 | 133,952.65 | 145,423.68 | 204,127.87 | 94,419.36 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 101,098.44 | 25,577.93 | ( 12,755.41) | ( 17,265.67) | 31,526.90 |
| Payments-Cash | ( 6,620.30) | ( 3,599.97) | ( 3,264.13) | ( 1,796.41) | ( 800.34) |
| Forfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| New Loans | 0.00 | 0.00 | ( 5,077.71) | ( 114.81) | 0.00 |
| Conversion | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 314,802.62 | 156,173.95 | 125,280.29 | 193,452.83 | 131,615.65 |
| Net Activity | 314,802.62 | 156,173.95 | 125,280.29 | 193,452.83 | 131,615.65 |
| NAV/Shr Price for Day | 85.077745 | 271.230414 | 250.843159 | 298.747857 | 90.987109 |
| Unit Purchase/Sale | 3,700.175 | 575.797 | 499.436 | 647.545 | 1,446.530 |
| Total Record Keeping Units | 332,098.505 | 139,184.556 | 154,008.022 | 176,716.070 | 395,142.100 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/15/2001 To 11/15/2001

Run Date: 11/15/2001
Page: 4

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Fidelity OTC Portfolio 55898-0-249012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | 103,334.82 | 41,728.46 | 41,742.38 | 98,035.99 | 667,140.35 |
| After-Tax | 5,894.24 | 2,664.56 | 827.03 | 3,077.37 | 29,716.31 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 966,681.99 |
| Profit Sharing | 5,008.21 | 420.77 | 1,867.21 | 5,076.29 | 20,889.57 |
| Total Contributions | 114,237.27 | 44,813.79 | 44,436.62 | 106,189.65 | 1,684,428.22 |
| Payroll Loan Payments | | | | | |
| Principal | 88.56 | 261.84 | 111.86 | 444.87 | 2,423.63 |
| Interest | 20.84 | 91.04 | 34.31 | 126.78 | 790.97 |
| Total Loan Payments | 109.40 | 352.88 | 146.17 | 571.65 | 3,214.60 |
| Total Payroll | 109,338.46 | 44,745.90 | 42,715.58 | 101,685.01 | 1,666,753.25 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 93,103.08 |
| Transfers | 41,573.26 | ( 4,317.90) | ( 1,493.73) | 90,484.62 | ( 514,352.05) |
| Payments-Cash | ( 6,777.01) | ( 3,633.29) | 0.00 | ( 305.63) | ( 15,257.63) |
| Forfeitures | 0.00 | 0.00 | 0.00 | 0.00 | ( 194.44) |
| New Loans | ( 66.32) | ( 73.02) | 0.00 | ( 321.40) | ( 3,353.85) |
| Conversion | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 149,076.60 | 37,342.46 | 43,089.06 | 196,618.89 | 1,249,587.93 |
| Net Activity | 149,076.60 | 37,342.46 | 43,089.06 | 196,618.89 | 1,249,587.93 |
| NAV/Shr Price for Day | 243.107232 | 144.017955 | 106.071865 | 124.281414 | 61.637557 |
| Unit Purchase/Sale | 613.213 | 259.290 | 406.225 | 1,582.045 | 20,273.157 |
| Total Record Keeping Units | 101,145.550 | 73,729.921 | 100,892.344 | 227,570.356 | 2,505,323.759 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/15/2001 To 11/15/2001

Run Date: 11/15/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633183-001 |
|---|---|---|
| Contributions | | |
| Before-Tax | 56,040.37 | 0.00 |
| After-Tax | 2,815.51 | 0.00 |
| Company Match | 0.00 | 0.00 |
| Profit Sharing | 1,618.92 | 0.00 |
| Total Contributions | 60,474.80 | 0.00 |
| Payroll Loan Payments | | |
| Principal | 272.76 | 0.00 |
| Interest | 53.74 | 0.00 |
| Total Loan Payments | 326.50 | 0.00 |
| Total Payroll | 59,182.38 | 0.00 |
| Manual Loan Payments | | |
| Principal | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 |
| Transfers | ( 181,761.00) | 0.00 |
| Payments-Cash | 0.00 | 0.00 |
| Forfeitures | 0.00 | 0.00 |
| New Loans | ( 6,655.31) | 0.00 |
| Conversion | 0.00 | ( 89.95) |
| Net Fund Activity | ( 127,615.01) | ( 89.95) |
| Net Activity | ( 127,615.01) | ( 89.95) |
| NAV/Shr Price for Day | 140.405346 | |
| Unit Purchase/Sale | ( 908.904) | |
| Total Record Keeping Units | 97,951.729 | |
| Total Closing Value | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/15/2001 To 11/15/2001

Run Date: 11/15/2001
Page: 6

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| Stock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| Enron Corp. Stock | 9.480000 | ( 10,432) | ( 98,895.36) | ( 191,884.20) | ( 1,606.466000) |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/16/2001 To 11/16/2001

Run Date: 11/16/2001
Page: 1

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Clearing Account 55887-0 | Loan Fund 55868-0-536815-001 | Stable Asset Fund 55691-0-662704-002 | Pimco Total Return II 55905-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | (31,475.83) | (31,475.83) | 2,416.84 | 564.23 | 1,069.67 |
| Interest | (8,506.21) | 0.00 | 835.59 | 101.72 | 494.75 |
| Total Loan Payments | (39,982.04) | (31,475.83) | 3,252.43 | 665.95 | 1,564.42 |
| Total Payroll | (39,982.04) | (31,475.83) | 3,252.43 | 665.95 | 1,564.42 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | (165,213.00) | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 0.00 | 0.00 | (118,181.01) | 80,455.46 | (6,060.34) |
| Payments-Cash | 255,502.00 | 0.00 | (158,073.42) | 0.00 | (4,778.05) |
| New Loans | 33,120.00 | 33,120.00 | (5.72) | 0.00 | 0.00 |
| Net Fund Activity | 83,426.96 | 1,644.17 | (273,007.72) | 81,121.41 | (9,273.97) |
| Net Activity | 83,426.96 | 1,644.17 | (273,007.72) | 81,121.41 | (9,273.97) |
| NAV/Shr Price for Day | | | 160.748452 | 123.366427 | 11.719321 |
| Unit Purchase/Sale | | 1,644.170 | (1,698.353) | 657.564 | (791.340) |
| Total Record Keeping Units | | 16,923,524.440 | 1,402,602.953 | 142,095.455 | 820,094.214 |
| Total Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/16/2001 To 11/16/2001

Run Date: 11/16/2001
Page: 2

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 533.82 | 197.43 | 6,848.76 | 676.74 | 459.73 |
| Interest | 61.02 | 111.56 | 696.13 | 137.96 | 80.40 |
| Total Loan Payments | 594.84 | 308.99 | 7,544.89 | 814.70 | 540.13 |
| Total Payroll | 594.84 | 308.99 | 7,544.89 | 814.70 | 540.13 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | ( 21,552.69) | ( 13,615.66) | 68,879.46 | 83,994.48 | ( 28,373.97) |
| Payments-Cash | 0.00 | 0.00 | 0.00 | ( 18,669.26) | ( 62.91) |
| New Loans | 0.00 | ( 3,834.58) | ( 11.52) | 0.00 | ( 207.22) |
| Net Fund Activity | ( 20,957.85) | ( 17,141.25) | 76,412.83 | 66,139.92 | ( 28,103.97) |
| Net Activity | ( 20,957.85) | ( 17,141.25) | 76,412.83 | 66,139.92 | ( 28,103.97) |
| NAV/Shr Price for Day | 12.749800 | 12.609805 | 201.717906 | 260.564027 | 93.643894 |
| Unit Purchase/Sale | ( 1,643.770) | ( 1,359.359) | 378.810 | 253.833 | ( 300.115) |
| Total Record Keeping Units | 2,844,062.647 | 2,928,449.387 | 76,376.723 | 123,929.073 | 334,395.904 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/16/2001 To 11/16/2001

Run Date: 11/16/2001
Page: 3

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302) 651-8779 | (302) 651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | <br>Morning Contact<br>Morning Contact | <br>(847) 295-5000<br>(847) 295-5000 | <br>(847) 883-8100<br>(847) 883-8100 |

| ACTIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 2,591.20 | 924.30 | 1,132.22 | 1,537.60 | 469.86 |
| Interest | 744.67 | 333.17 | 439.97 | 451.56 | 161.21 |
| Total Loan Payments | 3,335.87 | 1,257.47 | 1,572.19 | 1,989.16 | 671.07 |
| Total Payroll | 3,335.87 | 1,257.47 | 1,572.19 | 1,989.16 | 671.07 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | (1,456.32) | (117,219.60) | 1,906.53 | 836,250.37 | (56,267.48) |
| Payments-Cash | (194.07) | (19,772.55) | (16,735.58) | (20,157.69) | 0.00 |
| New Loans | (2,219.00) | 0.00 | (372.38) | (9,562.26) | (384.46) |
| Net Fund Activity | (533.52) | (135,734.68) | (13,609.24) | 808,519.58 | (55,980.87) |
| Net Activity | (533.52) | (135,734.68) | (13,609.24) | 808,519.58 | (55,980.87) |
| NAV/Shr Price for Day | 84.819748 | 270.429411 | 249.658433 | 297.550598 | 90.410146 |
| Unit Purchase/Sale | (6.290) | (501.922) | (54.511) | 2,717.250 | (619.187) |
| Total Record Keeping Units | 332,092.215 | 138,582.533 | 153,953.510 | 179,433.321 | 394,522.912 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/16/2001 To 11/16/2001

Run Date: 11/16/2001
Page: 4

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Fidelity OTC Portfolio 55898-0-749012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 789.09 | 405.76 | 258.74 | 282.97 | 10,035.71 |
| Interest | 256.80 | 180.87 | 151.59 | 77.04 | 3,127.51 |
| Total Loan Payments | 1,045.89 | 586.63 | 410.33 | 360.01 | 13,163.22 |
| Total Payroll | 1,045.89 | 586.63 | 410.33 | 360.01 | 13,163.22 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 165,213.00 |
| Transfers | 81,460.12 | 10,083.78 | ( 6,392.80) | 17,274.60 | ( 415,226.27) |
| Payments-Cash | ( 16,362.95) | 0.00 | 0.00 | 0.00 | ( 691.22) |
| New Loans | ( 8,145.48) | ( 215.67) | 0.00 | ( 314.43) | ( 7,847.26) |
| Net Fund Activity | 57,997.58 | 10,454.74 | ( 5,982.47) | 17,320.18 | ( 245,388.55) |
| Net Activity | 57,997.58 | 10,454.74 | ( 5,982.47) | 17,320.18 | ( 245,388.55) |
| NAV/Shr Price for Day | 242.707678 | 145.172635 | 106.807228 | 124.495078 | 56.598577 |
| Unit Purchase/Sale | 238.960 | 72.015 | ( 56.011) | 139.123 | ( 4,187.618) |
| Total Record Keeping Units | 101,384.511 | 73,801.337 | 100,836.333 | 227,709.479 | 2,500,231.511 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/16/2001 To 11/16/2001

Run Date: 11/16/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| | Sue Sobocinski | | | |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633183-001 |
|---|---|---|
| Before-Tax | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 |
| Payroll Loan Payments | | |
| Principal | 261.16 | 0.00 |
| Interest | 42.69 | 0.00 |
| Total Loan Payments | 303.85 | 0.00 |
| Total Payroll | 303.85 | 0.00 |
| Manual Loan Payments | | |
| Principal | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 |
| Transfers | ( 421,447.77) | 25,489.11 |
| Payments-Cash | ( 24.30) | 0.00 |
| New Loans | 0.00 | 0.00 |
| Net Fund Activity | ( 421,168.22) | 25,489.11 |
| Net Activity | ( 421,168.22) | 25,489.11 |
| NAV/Shr Price for Day | 144.378018 | |
| Unit Purchase/Sale | ( 2,917.121) | |
| Total Record Keeping Units | 94,976.120 | |
| Total Closing Value | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/16/2001 To 11/16/2001

Run Date: 11/16/2001
Page: 6

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| Stock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| Enron Corp. Stock | 9.000000 | ( 5,890) | ( 53,010.00) | ( 126,661.97) | ( 904.629000) |
| EOG Stock | 32.730000 | ( 258) | ( 8,444.34) | ( 6,348.03) | ( 58.488000) |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/19/2001 To 11/19/2001

Run Date: 11/19/2001
Page: 1

| TO: | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: Hewitt Associates LLC<br>Stacey Fratus<br>Monica Harnandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| ACTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| **Contributions** | | | | | |
| Before-Tax | (376.66) | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | (215.91) | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | (592.57) | 0.00 | 0.00 | 0.00 | 0.00 |
| **Payroll Loan Payments** | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | (592.57) | 0.00 | 0.00 | 0.00 | 0.00 |
| **Manual Loan Payments** | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | (114,346.26) | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 0.00 | 0.00 | 418,494.50 | (57,451.07) | (1,963.81) |
| Payments-Cash | 746,719.66 | 0.00 | (719,691.86) | 0.00 | (2,614.09) |
| New Loans | 132,010.00 | 132,010.00 | (2,114.45) | 0.00 | 0.00 |
| **Adjustments** | | | | | |
| -Transfers | 0.00 | 0.00 | 1,635.50 | 0.00 | 0.00 |
| Net Fund Activity | 763,790.83 | 132,010.00 | (301,676.31) | (57,451.07) | (4,577.90) |
| Net Activity | 763,790.83 | 132,010.00 | (301,676.31) | (57,451.07) | (4,577.90) |
| NAV/Shr Price for Day | | | 160.829703 | 124.199628 | 11.779190 |
| Unit Purchase/Sale | | 132,010.000 | (1,875.744) | (462.570) | (388.642) |
| Total Record Keeping Units | | 17,055,534.440 | 1,400,727.208 | 141,636.885 | 819,705.572 |
| Total Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

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029

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/19/2001 To 11/19/2001

Run Date: 11/19/2001
Page: 2

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Pratus<br>Monica Hernandez | <br>Morning Contact<br>Morning Contact | <br>(847)295-5000<br>(847)295-5000 | <br>(847)883-8300<br>(847)883-8100 |

| ACTIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248703-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| **Contributions** | | | | | |
| Before-Tax | 108.48 | 95.26 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 108.48 | 95.26 | 0.00 | 0.00 | 0.00 |
| **Payroll Loan Payments** | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | 108.48 | 95.26 | 0.00 | 0.00 | 0.00 |
| **Manual Loan Payments** | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | (105,462.93) | 4,033.20 | 156,935.55 | 49,990.80 | (144,585.92) |
| Payments-Cash | (2,487.96) | 0.00 | (5,716.96) | (1,400.86) | 0.00 |
| New Loans | (384.27) | (32,915.41) | (491.68) | (885.72) | (222.75) |
| **Adjustments** | | | | | |
| -Transfers | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | (108,226.66) | (28,796.95) | 150,726.91 | 47,704.22 | (144,808.67) |
| Net Activity | (108,226.66) | (28,796.95) | 150,726.91 | 47,704.22 | (144,808.67) |
| NAV/Shr Price for Day | 12.849762 | 12.719768 | 203.359882 | 263.187052 | 94.269103 |
| Unit Purchase/Sale | (8,422.464) | (2,263.952) | 741.183 | 181.255 | (1,536.119) |
| Total Record Keeping Units | 2,815,640.183 | 2,926,185.435 | 77,117.906 | 124,110.329 | 332,859.784 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/19/2001 To 11/19/2001

Run Date: 11/19/2001
Page: 3

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| **Contributions** | | | | | |
| Before-Tax | 0.00 | 0.00 | 86.46 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 86.46 | 0.00 | 0.00 |
| **Payroll Loan Payments** | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | 0.00 | 0.00 | 86.46 | 0.00 | 0.00 |
| **Manual Loan Payments** | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 71,267.56 | 71,221.77 | 52,042.54 | 169,172.94 | (85,906.57) |
| Payments-Cash | (4,576.47) | (5,155.81) | (4,575.16) | (44.71) | 0.00 |
| New Loans | (10.52) | (1,178.33) | (46,691.20) | (19,865.65) | (212.69) |
| **Adjustments** | | | | | |
| -Transfers | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 66,680.57 | 64,887.63 | 862.64 | 149,262.58 | (86,119.26) |
| Net Activity | 66,680.57 | 64,887.63 | 862.64 | 149,262.58 | (86,119.26) |
| NAV/Shr Price for Day | 85.738155 | 272.685281 | 252.558533 | 303.991297 | 91.458732 |
| Unit Purchase/Sale | 777.723 | 237.957 | 3.415 | 491.009 | (941.618) |
| Total Record Keeping Units | 332,869.938 | 136,920.591 | 153,956.926 | 179,924.330 | 393,581.293 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

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031

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/19/2001 To 11/19/2001

Run Date: 11/19/2001
Page: 4

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | <br>Morning Contact<br>Morning Contact | <br>(847)295-5000<br>(847)295-5000 | <br>(847)883-8100<br>(847)883-8100 |

| ACTIVITY | Fidelity OTC Portfolio 55898-0-249812-002 | Fidelity Overseas 55897-0-246873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | 0.00 | 0.00 | 43.23 | 0.00 | 43.23 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 215.91 |
| Total Contributions | 0.00 | 0.00 | 43.23 | 0.00 | 259.14 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | 0.00 | 0.00 | 43.23 | 0.00 | 259.14 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 114,346.26 |
| Transfers | 145,116.35 | (14,842.71) | (112,622.56) | 20,934.95 | (606,969.52) |
| Payments-Cash | 0.00 | 0.00 | (49.00) | 0.00 | (406.78) |
| New Loans | (12,254.10) | (7,412.65) | (339.69) | (832.63) | (6,034.87) |
| Adjustments | | | | | |
| -Transfers | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 132,864.25 | (22,255.36) | (112,968.22) | 20,102.32 | (498,805.77) |
| Net Activity | 132,864.25 | (22,255.36) | (112,968.22) | 20,102.32 | (498,805.77) |
| NAV/Shr Price for Day | 245.820374 | 146.378651 | 106.939928 | 126.044812 | 58.978773 |
| Unit Purchase/Sale | 540.493 | (152.039) | (1,056.370) | 159.485 | (8,457.376) |
| Total Record Keeping Units | 101,925.004 | 73,649.898 | 93,779.962 | 227,868.965 | 2,491,126.801 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/19/2001 To 11/19/2001

Run Date: 11/19/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1445 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633193-001 |
|---|---|---|
| Contributions | | |
| Before-Tax | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 |
| Payroll Loan Payments | | |
| Principal | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 |
| Total Payroll | 0.00 | 0.00 |
| Manual Loan Payments | | |
| Principal | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 |
| Transfers | ( 32,141.59) | 2,744.50 |
| Payments-Cash | 0.00 | 0.00 |
| New Loans | ( 163.19) | 0.00 |
| Adjustments | | |
| -Transfers | ( 1,635.50) | 0.00 |
| Net Fund Activity | ( 33,940.28) | 2,744.50 |
| Net Activity | ( 33,940.28) | 2,744.50 |
| NAV/Shr Price for Day | 144.464960 | |
| Unit Purchase/Sale | ( 234.944) | |
| Total Record Keeping Units | 94,741.175 | |
| Total Closing Value | [redacted] | [redacted] |

Run Date: 11/19/2001
Page: 6

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/19/2001 To 11/19/2001

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Pratus<br>Monica Hernandez | <br>Morning Contact<br>Morning Contact | <br>(847)295-5000<br>(847)295-5000 | <br>(847)883-8100<br>(847)883-8100 |

| Stock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| Enron Corp. Stock | 9.060000 | ( 4,214) | ( 38,178.84) | ( 209,701.55) | ( 647.332000) |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/20/2001 To 11/20/2001

Run Date: 11/21/2001
Page: 1

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | <br>Morning Contact<br>Morning Contact | <br>(847)295-5000<br>(847)295-5000 | <br>(847)883-8100<br>(847)883-8100 |

| ACTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | (570.19) | 0.00 | 0.00 | 0.00 | 570.19 |
| Adj. Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | (507.69) | 0.00 | 0.00 | 0.00 | 0.00 |
| Profit Sharing | (167.46) | 0.00 | 0.00 | 0.00 | 167.46 |
| Total Contributions | (1,245.34) | 0.00 | 0.00 | 0.00 | 737.65 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | (1,077.88) | 0.00 | 0.00 | 0.00 | 570.19 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | (1,939.14) | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 0.00 | 0.00 | 489,717.79 | 247,891.02 | (55,719.16) |
| Payments-Cash | 1,045,847.00 | 0.00 | (433,970.82) | (24.43) | (53,910.45) |
| New Loans | 6,000.00 | 6,000.00 | 0.00 | 0.00 | 0.00 |
| Adjustments | | | | | |
| -Transfers | 0.00 | 0.00 | 145.52 | 0.00 | 0.00 |
| -New Loans | (770.00) | (770.00) | 90.27 | 13.04 | 5.35 |
| Net Fund Activity | 1,047,832.52 | 5,230.00 | 55,982.86 | 247,879.63 | (108,886.61) |
| Net Activity | 1,047,832.52 | 5,230.00 | 55,982.86 | 247,879.63 | (108,886.61) |
| NAV/Shr Price for Day | | | 160.856810 | 123.631622 | 11.739146 |
| Unit Purchase/Sale | | 5,230.000 | 348.030 | 2,004.984 | (9,275.515) |
| Total Record Keeping Units | | 17,060,764.440 | 1,401,075.238 | 143,641.869 | 810,430.056 |
| Total Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/20/2001 To 11/20/2001

Run Date: 11/21/2001
Page: 2

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Pratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| ACTIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Adj. Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Profit Sharing | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | ( 23,205.39) | ( 177,050.72) | 31,073.08 | 11,519.92 | 39,708.60 |
| Payments-Cash | ( 55,536.17) | ( 3,490.37) | ( 17,841.56) | ( 21,676.09) | ( 59,716.66) |
| New Loans | ( 2,898.84) | 0.00 | 0.00 | 0.00 | ( 22.83) |
| Adjustments | | | | | |
| -Transfers | 101,234.77 | 0.00 | 11,588.26 | 0.00 | 0.00 |
| -New Loans | 13.83 | 125.59 | 5.10 | 9.06 | 8.67 |
| Net Fund Activity | 19,607.60 | ( 180,415.50) | 24,824.88 | ( 10,147.11) | ( 20,022.22) |
| Net Activity | 19,607.60 | ( 180,415.50) | 24,824.88 | ( 10,147.11) | ( 20,022.22) |
| NAV/Shr Price for Day | 13.769750 | 12.619756 | 202.400777 | 261.276433 | 94.195403 |
| Unit Purchase/Sale | 1,486.102 | ( 14,296.295) | 122.382 | ( 38.688) | ( 212.560) |
| Total Record Keeping Units | 2,837,126.286 | 2,911,669.139 | 77,240.286 | 124,071.641 | 332,647.224 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/20/2001 To 11/20/2001

Run Date: 11/21/2001
Page: 3

| | Title | Phone | Fax |
|---|---|---|---|
| TO: Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: Hewitt Associates LLC<br>Stacey Pratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| ACTIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Adj. Before-Tax | 0.00 | 0.01 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Profit Sharing | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.01 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | 0.00 | 0.01 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 47,095.58 | 97,446.77 | ( 120,033.74) | 29,707.68 | ( 1,925.51) |
| Payments-Cash | ( 9,203.30) | ( 27,746.72) | ( 122,066.52) | ( 81,176.47) | ( 1,270.94) |
| New Loans | 0.00 | ( 661.53) | ( 958.77) | 0.00 | ( 21.96) |
| Adjustments | | | | | |
| -Transfers | 0.00 | 0.00 | 951.73 | 0.00 | 0.00 |
| -New Loans | 48.07 | 18.13 | 115.95 | 62.00 | 15.71 |
| Net Fund Activity | 37,940.35 | 69,056.66 | ( 241,991.35) | ( 51,406.79) | ( 3,202.70) |
| Net Activity | 37,940.35 | 69,056.66 | ( 241,991.35) | ( 51,406.79) | ( 3,202.70) |
| NAV/Shr Price for Day | 85.117501 | 271.957072 | 250.914515 | 297.834813 | 90.613554 |
| Unit Purchase/Sale | 445.742 | 253.924 | ( 964.463) | ( 172.604) | ( 35.342) |
| Total Record Keeping Units | 333,315.680 | 139,174.516 | 152,992.462 | 179,751.726 | 393,545.951 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

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037

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/20/2001 To 11/20/2001

Run Date: 11/21/2001
Page: 6

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| ACTIVITY | Fidelity OTC Portfolio 55898-0-249012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Adj. Before-Tax | 0.00 | 0.00 | (0.01) | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 507.69 |
| Profit Sharing | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | (0.01) | 0.00 | 507.69 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | 0.00 | 0.00 | (0.01) | 0.00 | 507.69 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 1,999.14 |
| Transfers | 4,389.25 | (4,333.31) | (4,490.58) | 31,660.79 | (646,375.94) |
| Payments-Cash | (71,247.57) | (46,793.67) | 0.00 | (27,028.20) | (10,041.22) |
| New Loans | (808.28) | (571.42) | (25.90) | (30.47) | 0.00 |
| Adjustments | | | | | |
| -Transfers | 0.00 | 0.00 | 0.00 | 0.00 | (113,920.38) |
| -New Loans | 57.55 | 12.14 | 9.96 | 31.18 | 89.97 |
| Net Fund Activity | (67,609.05) | (51,686.25) | (4,506.53) | 4,633.30 | (767,740.74) |
| Net Activity | (67,609.05) | (51,686.25) | (4,506.53) | 4,633.30 | (767,740.74) |
| NAV/Shr Price for Day | 238.155391 | 144.330611 | 106.872685 | 125.723922 | 45.806004 |
| Unit Purchase/Sale | (283.892) | (358.110) | (42.166) | 36.854 | (16,205.687) |
| Total Record Keeping Units | 101,641.111 | 73,291.787 | 93,737.795 | 227,905.819 | 2,471,617.322 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/20/2001 To 11/20/2001

Run Date: 11/21/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633183-001 |
|---|---|---|
| Contributions | | |
| Before-Tax | 0.00 | 0.00 |
| Adj. Before-Tax | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 |
| Profit Sharing | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 |
| | | |
| Payroll Loan Payments | | |
| Principal | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 |
| Total Payroll | 0.00 | 0.00 |
| | | |
| Manual Loan Payments | | |
| Principal | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 |
| | | |
| Rollovers From ESOP | 0.00 | 0.00 |
| Transfers | (10,051.78) | 12,976.25 |
| Payments-Cash | (3,105.84) | 0.00 |
| New Loans | 0.00 | 0.00 |
| | | |
| Adjustments | | |
| -Transfers | 0.00 | 0.00 |
| -New Loans | 38.43 | 0.00 |
| Net Fund Activity | (13,119.19) | 12,976.25 |
| | | |
| Net Activity | (13,119.19) | 12,976.25 |
| NAV/Shr Price for Day | 151.786700 | |
| Unit Purchase/Sale | (86.431) | |
| Total Record Keeping Units | 94,654.764 | |
| Total Closing Value | [redacted] | [redacted] |

HEWITT

039

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/20/2001 To 11/20/2001

Run Date: 11/21/2001
Page: 6

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302) 651-8779 | (302) 651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847) 295-5000 | (847) 883-8100 |
| | Monica Hernandez | Morning Contact | (847) 295-5000 | (847) 883-8100 |

| Stock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| Enron Corp. Stock | 6.390000 | ( 21,650) | ( 151,333.50) | ( 401,625.95) | ( 3,303.792000) |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/21/2001 To 11/21/2001

Run Date: 11/21/2001
Page: 1

| | Title | Phone | Fax |
|---|---|---|---|
| TO: Wilmington Trust, Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: Hewitt Associates LLC | | | |
| Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | (280.97) | (280.97) | 0.00 | 0.00 | 280.97 |
| Interest | (138.03) | 0.00 | 0.00 | 0.00 | 138.03 |
| Total Loan Payments | (419.00) | (280.97) | 0.00 | 0.00 | 419.00 |
| Rollovers | (1,288.95) | 0.00 | 644.48 | 0.00 | 0.00 |
| Rollovers From ESOP | (249,137.28) | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 0.00 | 0.00 | 811,945.86 | 255,996.08 | 24,314.74 |
| Payments-Cash | 2,189,698.29 | 0.00 | (894,268.42) | (8,735.46) | (272,222.55) |
| Forfeitures | 144.35 | 0.00 | 0.00 | 0.00 | 0.00 |
| New Loans | 6,348.00 | 6,348.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 1,945,345.41 | 6,067.03 | (81,678.08) | 247,260.62 | (247,488.81) |
| Net Activity | 1,945,345.41 | 6,067.03 | (81,678.08) | 247,260.62 | (247,488.81) |
| NAV/Shr Price for Day | | | 160.883917 | 123.064320 | 11.699102 |
| Unit Purchase/Sale | | 6,067.030 | (507.683) | 2,009.198 | (21,154.513) |
| Total Record Keeping Units | | 17,066,831.470 | 1,400,567.555 | 145,651.067 | 789,275.542 |
| Total Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

HEWITT

041

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/21/2001 To 11/21/2001

Run Date: 11/21/2001
Page: 2

| | Title | Phone | Fax |
|---|---|---|---|
| O: Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| CTIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| efore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| fter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ayroll Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| anual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ransfers | 31,571.50 | ( 102,990.83) | 5,599.15 | ( 21,561.86) | ( 27,484.18) |
| ayments-Cash | ( 17,324.53) | ( 2,726.43) | ( 153,408.19) | ( 351,221.58) | ( 118,017.75) |
| orfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ew Loans | 0.00 | ( 540.67) | 0.00 | 0.00 | ( 445.07) |
| et Fund Activity | 14,246.97 | ( 106,257.93) | ( 147,809.04) | ( 372,784.44) | ( 145,947.00) |
| et Activity | 14,246.97 | ( 106,257.93) | ( 147,809.04) | ( 372,784.44) | ( 145,947.00) |
| AV/Shr Price for Day | 12.719959 | 12.569744 | 201.442377 | 260.830326 | 93.496173 |
| nit Purchase/Sale | 1,120.047 | ( 8,453.468) | ( 733.753) | ( 1,429.232) | ( 1,560.994) |
| otal Record Keeping Units | 2,838,246.333 | 2,903,435.671 | 76,506.535 | 122,642.419 | 331,086.230 |
| otal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/21/2001 To 11/21/2001

Run Date: 11/21/2001
Page: 3

| | | Title | Phone | Fax |
|---|---|---|---|---|
| ): | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| tOM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| :TIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| ifore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :ter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ital Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| iyroll Loan Payments | | | | | |
| :incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| iterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| inual Loan Payments | | | | | |
| :incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| iterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ital Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| illovers | 644.47 | 0.00 | 0.00 | 0.00 | 0.00 |
| illovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :ansfers | ( 25,356.53) | ( 9,055.27) | ( 35,113.57) | 113,929.42 | 18,457.07 |
| iyments-Cash | ( 40,755.77) | ( 50,255.79) | ( 4,063.36) | ( 25,485.57) | ( 32,576.38) |
| irfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| iw Loans | 0.00 | 0.00 | ( 2,337.32) | ( 1,111.98) | 0.00 |
| it Fund Activity | ( 65,467.83) | ( 59,311.06) | ( 41,494.25) | 87,331.87 | ( 14,119.31) |
| it Activity | ( 65,467.83) | ( 59,311.06) | ( 41,494.25) | 87,331.87 | ( 14,119.31) |
| \V/Shr Price for Day | 84.698323 | 270.937685 | 249.705656 | 296.979578 | 90.357248 |
| iit Purchase/Sale | ( 772.952) | ( 218.910) | ( 166.172) | 294.066 | ( 156.261) |
| ital Record Keeping Units | 332,542.728 | 138,955.606 | 152,826.289 | 180,045.793 | 393,389.690 |
| ital Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/21/2001 To 11/21/2001

Run Date: 11/21/2001
Page: 4

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: Hewitt Associates LLC | | | |
| Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| TIVITY | Fidelity OTC Portfolio 55898-0-249012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| efore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| fter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ayroll Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nnual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 249,137.28 |
| ransfers | ( 34,891.97) | ( 15,321.79) | 14,768.55 | ( 28,984.39) | ( 876,477.00) |
| ayments-Cash | ( 37,171.55) | ( 20,067.56) | ( 38,060.38) | ( 65,071.22) | ( 58,247.50) |
| orfeitures | 0.00 | 0.00 | 0.00 | 0.00 | ( 144.35) |
| ew Loans | 0.00 | 0.00 | 0.00 | ( 1,693.82) | ( 239.14) |
| et Fund Activity | ( 72,063.52) | ( 35,389.35) | ( 23,291.83) | ( 95,749.43) | ( 685,970.71) |
| et Activity | ( 72,063.52) | ( 35,389.35) | ( 23,291.83) | ( 95,749.43) | ( 685,970.71) |
| AV/Shr Price for Day | 237.436495 | 144.277544 | 106.604791 | 125.296121 | 33.112624 |
| nit Purchase/Sale | ( 303.506) | ( 245.286) | ( 218.487) | ( 764.185) | ( 20,716.290) |
| otal Record Keeping Units | 101,337.605 | 73,046.501 | 99,519.307 | 227,141.634 | [redacted],449,945.863 |
| otal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

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044

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/21/2001 To 11/21/2001

Run Date: 11/21/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| ): | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1445 |
| ROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| TIVITY | | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-631183-001 |
|---|---|---|---|
| fore-Tax | | 0.00 | 0.00 |
| ter-Tax | | 0.00 | 0.00 |
| mpany Match | | 0.00 | 0.00 |
| tal Contributions | | 0.00 | 0.00 |
| yroll Loan Payments | | | |
| rincipal | | 0.00 | 0.00 |
| terest | | 0.00 | 0.00 |
| nual Loan Payments | | | |
| rincipal | | 0.00 | 0.00 |
| terest | | 0.00 | 0.00 |
| tal Loan Payments | | 0.00 | 0.00 |
| llovers | | 0.00 | 0.00 |
| llovers From ESOP | | 0.00 | 0.00 |
| ansfers | ( | 109,343.98) | 10,000.00 |
| yments-Cash | ( | 18.30) | 0.00 |
| rfeitures | | 0.00 | 0.00 |
| w Loans | | 0.00 | 0.00 |
| t Fund Activity | ( | 109,362.28) | 10,000.00 |
| t Activity | ( | 109,362.28) | 10,000.00 |
| AV/Shr Price for Day | | 151.280573 | |
| nit Purchase/Sale | ( | 723.910) | |
| otal Record Keeping Units | | 93,920.964 | |
| otal Closing Value | | [redacted] | [redacted] |

 

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/21/2001 To 11/21/2001

Run Date: 11/21/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| ): | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ЮМ: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| :ock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| ıron Corp. Stock | 5.010000 | ( 6,313) | ( 31,628.13) | ( 135,881.39) | ( 955.168000) |
| XG Stock | 34.320000 | ( 48) | ( 1,647.36) | ( 1,618.94) | ( 10.889000) |

HEWITT

046

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/23/2001 To 11/23/2001

Run Date: 11/23/2001
Page: 1

| | | Title | Phone | Fax |
|---|---|---|---|---|
| O: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| TIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| fore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| tal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| yroll Loan Payments | | | | | |
| incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nual Loan Payments | | | | | |
| incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| tal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| llovers From ESOP | (7,503.42) | 0.00 | 0.00 | 0.00 | 0.00 |
| ansfers | 0.00 | 0.00 | 461,930.09 | (179,661.11) | (41,125.96) |
| yments-Cash | 34,130.69 | 0.00 | 0.00 | 0.00 | 0.00 |
| rfeitures | 79.10 | 0.00 | 0.00 | 0.00 | 0.00 |
| w Loans | 5,900.00 | 5,900.00 | 0.00 | (330.65) | 0.00 |
| t Fund Activity | 32,606.37 | 5,900.00 | 461,930.09 | (179,991.76) | (41,125.96) |
| t Activity | 32,606.37 | 5,900.00 | 461,930.09 | (179,991.76) | (41,125.96) |
| V/Shr Price for Day | | | 160.938160 | 122.744191 | 11.729011 |
| it Purchase/Sale | | 5,900.000 | 2,870.233 | (1,466.397) | (3,506.345) |
| tal Record Keeping Units | | 17,072,731.470 | 1,403,437.788 | 144,184.670 | 785,769.196 |
| tal Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/23/2001 To 11/23/2001

Run Date: 11/23/2001
Page: 2

| | Title | Phone | Fax |
|---|---|---|---|
| ): Wilmington Trust | | | |
| Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| :OM: Hewitt Associates LLC | | | |
| Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| :TIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| :fore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :ter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :tal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :yroll Loan Payments | | | | | |
| ·incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :nual Loan Payments | | | | | |
| ·incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :tal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :llovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ·ansfers | (7,341.73) | (26,132.39) | 48,324.70 | 18,694.79 | (73,344.42) |
| :yments-Cash | 0.00 | (4,692.72) | 0.00 | 0.00 | (1,475.30) |
| :rfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :w Loans | 0.00 | 0.00 | 0.00 | 0.00 | (1,414.68) |
| :t Fund Activity | (7,341.73) | (30,825.11) | 48,324.70 | 18,694.79 | (76,234.40) |
| :t Activity | (7,341.73) | (30,825.11) | 48,324.70 | 18,694.79 | (76,234.40) |
| :V/Shr Price for Day | 12.779934 | 12.649719 | 202.673982 | 263.882025 | 94.452650 |
| :it Purchase/Sale | (574.473) | (2,436.821) | 238.435 | 70.845 | (807.117) |
| :tal Record Keeping Units | 2,837,671.859 | 2,900,998.849 | 76,744.970 | 122,713.264 | 330,279.112 |
| :tal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/23/2001 To 11/23/2001

Run Date: 11/23/2001
Page: 3

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| OM: Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| TIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| fore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| tal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| yroll Loan Payments | | | | | |
| incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nual Loan Payments | | | | | |
| incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| tal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| llovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ansfers | 19,285.75 | 11,083.01 | 24,985.17 | ( 384.42) | 25,519.39 |
| yments-Cash | ( 6,083.84) | 0.00 | ( 7,421.33) | ( 7,306.94) | 0.00 |
| rfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| w Loans | 0.00 | 0.00 | 0.00 | 0.00 | ( 569.98) |
| t Fund Activity | 13,201.91 | 11,083.01 | 17,563.84 | ( 7,691.36) | 24,549.41 |
| t Activity | 13,201.91 | 11,083.01 | 17,563.84 | ( 7,691.36) | 24,549.41 |
| V/Shr Price for Day | 85.689370 | 273.339404 | 252.315907 | 301.710399 | 91.143710 |
| it Purchase/Sale | 154.067 | 40.546 | 69.610 | ( 25.492) | 269.348 |
| tal Record Keeping Units | 332,696.795 | 138,996.152 | 152,895.900 | 180,020.300 | 393,659.039 |
| tal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Run Date: 11/23/2001
Page: 4

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/23/2001 To 11/23/2001

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| M: Hewitt Associates LLC<br>Stacey Pratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| IVITY | Fidelity OTC Portfolio 55898-0-249012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| ore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| er-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| al Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| roll Loan Payments | | | | | |
| incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nual Loan Payments | | | | | |
| incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| tal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| llovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 7,503.42 |
| ansfers | 11,152.63 | 4,084.50 | ( 1,772.91) | 56,789.37 | ( 355,996.17) |
| yments-Cash | ( 4,841.46) | 0.00 | 0.00 | 0.00 | ( 2,293.02) |
| rfeitures | 0.00 | 0.00 | 0.00 | 0.00 | ( 79.10) |
| w Loans | 0.00 | 0.00 | ( 824.42) | ( 1,590.57) | ( 75.84) |
| t Fund Activity | 6,311.17 | 4,084.50 | ( 2,597.33) | 55,198.80 | ( 350,940.71) |
| t Activity | 6,311.17 | 4,084.50 | ( 2,597.33) | 55,198.80 | ( 350,940.71) |
| V/Shr Price for Day | 240.230184 | 144.906639 | 106.202769 | 126.899467 | 31.363097 |
| it Purchase/Sale | 26.271 | 28.187 | ( 24.456) | 434.980 | ( 11,189.606) |
| tal Record Keeping Units | 101,363.876 | 73,074.688 | 99,494.851 | 227,576.615 | 2,437,578.023 |
| tal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Run Date: 11/23/2001
Page: 5

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/23/2001 To 11/23/2001

| | | Title | Phone | Fax |
|---|---|---|---|---|
| : | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| )M: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| ΓIVITY | EOC Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633183-001 |
|---|---|---|
| fore-Tax | 0.00 | 0.00 |
| :er-Tax | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 |
| :al Contributions | 0.00 | 0.00 |
| /roll Loan Payments | | |
| incipal | 0.00 | 0.00 |
| :erest | 0.00 | 0.00 |
| nual Loan Payments | | |
| incipal | 0.00 | 0.00 |
| :erest | 0.00 | 0.00 |
| :al Loan Payments | 0.00 | 0.00 |
| llovers From ESOP | 0.00 | 0.00 |
| ansfers | 3,959.71 | ( 50.00) |
| yments-Cash | ( 16.08) | 0.00 |
| rfeitures | 0.00 | 0.00 |
| w Loans | ( 693.86) | 0.00 |
| t Fund Activity | 3,249.77 | ( 50.00) |
| t Activity | 3,249.77 | ( 50.00) |
| V/Shr Price for Day | 154.762819 | |
| it Purchase/Sale | 20.998 | |
| tal Record Keeping Units | 93,939.238 | |
| tal Closing Value | [redacted] | [redacted] |

HEWITT ☑051

Run Date: 11/23/2001
Page: 6

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/23/2001 To 11/23/2001

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| OH: Hewitt Associates LLC | | | |
| Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| ron Corp. Stock | 4.740000 | ( 7,796) | ( 36,953.04) | ( 102,585.99) | ( 1,178.233000) |
| G Stock | 35.140000 | ( 12) | ( 421.68) | ( 531.84) | ( 2.725000) |

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052

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/26/2001 To 11/26/2001

Run Date: 11/26/2001
Page: 1

| | | Title | Phone | Fax |
|---|---|---|---|---|
| O: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| CTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| ontributions | | | | | |
| efore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| dj. Before-Tax | 0.00 | 0.00 | (0.01) | (0.01) | 0.00 |
| fter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Contributions | 0.00 | 0.00 | (0.01) | (0.01) | 0.00 |
| ayroll Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Payroll | 0.00 | 0.00 | (0.01) | (0.01) | 0.00 |
| anual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | (127,249.33) | 0.00 | 0.00 | 0.00 | 0.00 |
| ransfers | 0.00 | 0.00 | 623,601.91 | (153,361.83) | 70,867.73 |
| ayments-Cash | 2,301,954.10 | 0.00 | (841,269.96) | (134,680.86) | (53,431.82) |
| orfeitures | 324.82 | 0.00 | 0.00 | 0.00 | 0.00 |
| ew Loans | 24,400.00 | 24,400.00 | (13,400.00) | 0.00 | 0.00 |
| et Fund Activity | 2,199,429.59 | 24,400.00 | (231,068.06) | (288,042.70) | 17,435.91 |
| et Activity | 2,199,429.59 | '24,400.00 | (231,068.06) | (288,042.70) | 17,435.91 |
| AV/Shr Price for Day | | | 161.019406 | 122.789811 | 11.758875 |
| nit Purchase/Sale | | 24,400.000 | (1,435.032) | (2,345.819) | 1,482.788 |
| otal Record Keeping Units | | 17,097,131.470 | 1,402,002.756 | 141,838.851 | 787,251.985 |
| otal Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/26/2001 To 11/26/2001

Run Date: 11/26/2001
Page: 2

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| :ION: Hewitt Associates LLC<br>Stacey Pratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| :TIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| ıntributions | | | | | |
| ıfore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ıj. Before-Tax | 0.00 | 0.00 | 0.01 | 0.00 | 0.01 |
| :ter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ımpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ıtal Contributions | 0.00 | 0.00 | 0.01 | 0.00 | 0.01 |
| ıyroll Loan Payments | | | | | |
| :incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ıterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ıtal Payroll | 0.00 | 0.00 | 0.01 | 0.00 | 0.01 |
| ınual Loan Payments | | | | | |
| :incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ıterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ıtal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ıllovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :ansfers | 63,879.36 | 65,674.78 | 93,138.27 | 48,372.57 | 30,622.39 |
| ıyments-Cash | (3,556.87) | (34,477.86) | (235,416.41) | (204,783.06) | (1,953.51) |
| ırfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ıw Loans | (4,659.67) | 0.00 | 0.00 | 0.00 | (2,513.40) |
| ıt Fund Activity | 55,662.82 | 31,196.92 | (142,278.13) | (156,410.49) | 26,155.49 |
| ıt Activity | 55,662.82 | 31,196.92 | (142,278.13) | (156,410.49) | 26,155.49 |
| ıV/Shr Price for Day | 12.839897 | 12.739682 | 203.494275 | 265.166321 | 94.452325 |
| ıit Purchase/Sale | 4,335.145 | 2,448.799 | (699.175) | (589.857) | 276.917 |
| ıtal Record Keeping Units | 2,842,007.005 | 2,903,447.649 | 76,045.795 | 122,123.406 | 330,556.030 |
| ıtal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

053

Enron
ily Transaction Activity Summary
Savings Plan
For 11/26/2001 To 11/26/2001

Run Date: 11/26/2001
Page: 3

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| :OM: Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| :TIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| ntributions | | | | | |
| :fore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ij. Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :ter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ital Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| iyroll Loan Payments | | | | | |
| :incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| iterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ital Payroll | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| inual Loan Payments | | | | | |
| :incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| iterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ital Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| illovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :ansfers | 156,614.01 | 102,900.25 | 139,171.40 | 66,736.28 | 12,730.36 |
| iyments-Cash | ( 2,773.41) | ( 189,096.49) | ( 132,236.01) | ( 175,324.79) | ( 13,140.88) |
| irfeitures | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| iw Loans | 0.00 | 0.00 | 0.00 | 0.00 | ( 2,399.05) |
| it Fund Activity | 153,840.60 | ( 86,196.24) | 6,935.39 | ( 108,588.51) | ( 2,809.57) |
| it Activity | 153,840.60 | ( 86,196.24) | 6,935.39 | ( 108,588.51) | ( 2,809.57) |
| iV/Shr Price for Day | 86.212885 | 274.721736 | 254.031511 | 306.327015 | 92.034966 |
| iit Purchase/Sale | 1,784.426 | ( 313.758) | 27.301 | ( 354.485) | ( 30.527) |
| ital Record Keeping Units | 334,481.231 | 138,682.394 | 151,923.201 | 179,665.815 | 393,628.511 |
| ital Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/26/2001 To 11/26/2001

Run Date: 11/26/2001
Page: 4

| | | Title | Phone | Fax |
|---|---|---|---|---|
| ): | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ;OM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| :TIVITY | Fidelity OTC Portfolio 55898-0-249012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| ›ntributions | | | | | |
| ›fore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| lj. Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| :ter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›mpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›tal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›yroll Loan Payments | | | | | |
| :incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›tal Payroll | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›nual Loan Payments | | | | | |
| :incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›tal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ›llovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 127,249.33 |
| :ansfers | (147,123.86) | 9,111.84 | (762.94) | 61,871.02 | (919,116.59) |
| ›yments-Cash | (65,971.33) | (74,163.19) | (661.66) | (1,265.20) | (137,750.79) |
| ›rfeitures | 0.00 | 0.00 | 0.00 | 0.00 | (324.82) |
| ›w Loans | 0.00 | 0.00 | 0.00 | (1,427.88) | 0.00 |
| ›t Fund Activity | (213,095.19) | (65,051.35) | (1,424.60) | 59,177.94 | (929,944.87) |
| ›t Activity | (213,095.19) | (65,051.35) | (1,424.60) | 59,177.94 | (929,944.87) |
| ›V/Shr Price for Day | 244.939679 | 147.330466 | 107.071174 | 127.540459 | 26.546895 |
| ›it Purchase/Sale | (869.990) | (443.563) | (13.305) | 463.993 | (35,030.269) |
| ›tal Record Keeping Units | 100,493.885 | 72,633.124 | 99,481.546 | 228,040.608 | 2,402,189.001 |
| ›tal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/26/2001 To 11/26/2001

Run Date: 11/26/2001
Page: 5

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| .OM: Hewitt Associates LLC | | | |
| Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| :TIVITY | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633103-001 |
|---|---|---|
| ntributions | | |
| fore-Tax | 0.00 | 0.00 |
| j. Before-Tax | 0.00 | 0.00 |
| ter-Tax | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 |
| tal Contributions | 0.00 | 0.00 |
| yroll Loan Payments | | |
| incipal | 0.00 | 0.00 |
| terest | 0.00 | 0.00 |
| tal Payroll | 0.00 | 0.00 |
| nual Loan Payments | | |
| incipal | 0.00 | 0.00 |
| terest | 0.00 | 0.00 |
| tal Loan Payments | 0.00 | 0.00 |
| llovers From ESOP | 0.00 | 0.00 |
| ansfers | ( 148,178.22) | ( 176,746.73) |
| yments-Cash | 0.00 | 0.00 |
| rfeitures | 0.00 | 0.00 |
| w Loans | 0.00 | 0.00 |
| t Fund Activity | ( 148,178.22) | ( 176,746.73) |
| t Activity | ( 148,178.22) | ( 176,746.73) |
| V/Shr Price for Day | 152.467567 | |
| it Purchase/Sale | ( 971.866) | |
| tal Record Keeping Units | 92,967.371 | |
| tal Closing Value | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/26/2001 To 11/26/2001

Run Date: 11/26/2001
Page: 6

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust | | | |
| Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| :ON: Hewitt Associates LLC | | | |
| Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| :ock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| ıron Corp. Stock | 4.010000 | ( 2,375) | ( 9,523.75) | ( 94,525.27) | ( 358.752000) |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/27/2001 To 11/27/2001

Run Date: 11/30/2001
Page: 1

| | Title | Phone | Fax |
|---|---|---|---|
| Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| M: Hewitt Associates LLC | | | |
| Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| IVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-559251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| ore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| er-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| pany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| al Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| roll Loan Payments | | | | | |
| ncipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| erest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ual Loan Payments | | | | | |
| ncipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| erest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| al Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| lovers From ESOP | ( 191,793.78) | 0.00 | 0.00 | 0.00 | 0.00 |
| nsfers | 0.00 | 0.00 | 391,654.39 | 25,157.38 | ( 14,461.55) |
| ments-Cash | 5,925,913.57 | 0.00 | ( 3,768,023.18) | ( 200,796.77) | ( 46,689.74) |
| Loans | 15,500.00 | 15,500.00 | ( 1,823.21) | ( 1,112.08) | ( 1,748.03) |
| Fund Activity | 5,749,619.79 | 15,500.00 | ( 3,378,192.00) | ( 176,751.47) | ( 62,899.32) |
| Activity | 5,749,619.79 | 15,500.00 | ( 3,378,192.00) | ( 176,751.47) | ( 62,899.32) |
| /Shr Price for Day | | | 161.046534 | 123.035174 | 11.758829 |
| t Purchase/Sale | | 15,500.000 | ( 20,976.496) | ( 1,436.592) | ( 5,349.114) |
| al Record Keeping Units | | 17,112,631.470 | 1,381,026.259 | 140,402.258 | 781,902.871 |
| al Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

058

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/27/2001 To 11/27/2001

Run Date: 11/30/2001
Page: 2

| | | Title | Phone | Fax |
|---|---|---|---|---|
| 'O: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| CTIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248702-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| efore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| fter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ayroll Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| anual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ransfers | ( 6,048.78) | ( 213,926.08) | 251,175.62 | 125,356.52 | ( 88,747.92) |
| ayments-Cash | ( 93,130.64) | ( 10,613.07) | ( 253,432.68) | ( 679,304.41) | ( 58,429.40) |
| ew Loans | ( 5,000.00) | ( 55.40) | 0.00 | ( 1,901.72) | 0.00 |
| et Fund Activity | ( 104,179.42) | ( 224,594.55) | ( 2,257.06) | ( 555,849.61) | ( 147,177.32) |
| et Activity | ( 104,179.42) | ( 224,594.55) | ( 2,257.06) | ( 555,849.61) | ( 147,177.32) |
| AV/Shr Price for Day | 12.819884 | 12.699670 | 202.946007 | 263.666659 | 94.047461 |
| nit Purchase/Sale | ( 8,126.392) | ( 17,685.073) | ( 11.121) | ( 2,108.152) | ( 1,564.926) |
| otal Record Keeping Units | 2,833,880.612 | 2,885,762.577 | 76,034.674 | 120,015.253 | 328,991.104 |
| otal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

HEWITT 080

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/27/2001 To 11/27/2001

Run Date: 11/30/2001
Page: 1

| | Title | Phone | Fax |
|---|---|---|---|
| ): Wilmington Trust / Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: Hewitt Associates LLC | | | |
| Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| CTIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| ifore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| tal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| yroll Loan Payments | | | | | |
| incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nual Loan Payments | | | | | |
| incipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| terest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| tal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| llovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ansfers | 131,779.86 | (37,555.34) | 113,582.50 | 27,762.56 | 44,521.27 |
| yments-Cash | (136,319.54) | (125,874.19) | (110,991.74) | (38,352.22) | (30,059.30) |
| w Loans | (281.64) | 0.00 | (859.59) | 0.00 | 0.00 |
| t Fund Activity | (4,821.32) | (163,429.53) | 1,731.17 | (10,589.66) | 14,461.97 |
| t Activity | (4,821.32) | (163,429.53) | 1,731.17 | (10,589.66) | 14,461.97 |
| V/Shr Price for Day | 85.632526 | 272.828806 | 252.167489 | 305.357771 | 91.510446 |
| it Purchase/Sale | (56.302) | (599.018) | 6.859 | (34.679) | 158.036 |
| tal Record Keeping Units | 334,424.919 | 138,083.375 | 152,930.060 | 179,631.135 | 393,786.548 |
| tal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/27/2001 To 11/27/2001

Run Date: 11/30/2001
Page: 4

| | | Title | Phone | Fax |
|---|---|---|---|---|
| O: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| CTIVITY | Fidelity OTC Portfolio 55896-0-249012-002 | Fidelity Overseas 55897-0-248873-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55688-0-230048-001 |
|---|---|---|---|---|---|
| efore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| fter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ayroll Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| anual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 193,793.78 |
| ransfers | ( 7,733.44) | 145,171.33 | ( 40,584.73) | ( 169,260.30) | ( 437,213.28) |
| ayments-Cash | ( 49,748.06) | ( 72,596.76) | ( 40,467.70) | ( 91,866.49) | ( 119,186.24) |
| ew Loans | 0.00 | ( 673.93) | 0.00 | ( 565.42) | ( 261.59) |
| et Fund Activity | ( 57,481.50) | 71,900.64 | ( 81,052.43) | ( 261,692.21) | ( 364,867.33) |
| et Activity | ( 57,481.50) | 71,900.64 | ( 81,052.43) | ( 261,692.21) | ( 364,867.33) |
| AV/Shr Price for Day | 244.540122 | 146.269841 | 105.602629 | 127.379935 | 27.453459 |
| nit Purchase/Sale | ( 235.059) | 491.561 | ( 760.323) | ( 2,054.422) | ( 13,290.396) |
| otal Record Keeping Units | 100,258.826 | 73,124.686 | 98,721.223 | 225,986.186 | 2,385,400.481 |
| otal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/27/2001 To 11/27/2001

Run Date: 11/30/2001
Page: 5

| | | Title | Phone | Fax |
|---|---|---|---|---|
| ): | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| :TIVITY | | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633103-001 |
|---|---|---|---|
| ıfore-Tax | | 0.00 | 0.00 |
| :ter-Tax | | 0.00 | 0.00 |
| mpany Match | | 0.00 | 0.00 |
| ıtal Contributions | | 0.00 | 0.00 |
| ıyroll Loan Payments | | | |
| :incipal | | 0.00 | 0.00 |
| ıterest | | 0.00 | 0.00 |
| ınual Loan Payments | | | |
| :incipal | | 0.00 | 0.00 |
| ıterest | | 0.00 | 0.00 |
| ıtal Loan Payments | | 0.00 | 0.00 |
| ıllovers From ESOP | | 0.00 | 0.00 |
| :ansfers | ( | 297,103.32) | 56,473.31 |
| ıyments-Cash | ( | 31.44) | 0.00 |
| ıw Loans | ( | 1,217.39) | 0.00 |
| ıt Fund Activity | ( | 298,352.15) | 56,473.31 |
| ıt Activity | ( | 298,352.15) | 56,473.31 |
| ıV/Shr Price for Day | | 152.404830 | |
| ıit Purchase/Sale | ( | 1,957.629) | |
| ıtal Record Keeping Units | | 90,614.943 | |
| ıtal Closing Value | | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/27/2001 To 11/27/2001

Run Date: 11/30/2001
Page: 6

| | | Title | Phone | Fax |
|---|---|---|---|---|
| 'O: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| tock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|
| nron Corp. Stock | 4.140000 | ( 23,197) | ( 96,035.58) | ( 365,955.29) | ( 3,498.123000) |
| DO Stock | 34.580000 | ( 1,740) | ( 60,169.20) | ( 37,851.43) | ( 394.799000) |

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Enron
Daily Transaction Activity Summary
Savings Plan
For 11/28/2001 To 11/28/2001

Run Date: 11/28/2001
Page: 1

| | Title | Phone | Fax |
|---|---|---|---|
| O: Wilmington Trust | | | |
| Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: Hewitt Associates LLC | | | |
| Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| CTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| efore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| fter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ayroll Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nnual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ransfers | 0.00 | 0.00 | 143,153.19 | 113,620.83 | (112,786.13) |
| ayments-Cash | 2,062,809.54 | 0.00 | (1,557,342.08) | (61,934.28) | (6,368.54) |
| ew Loans | 32,049.00 | 32,049.00 | (6,720.50) | (6,584.50) | 0.00 |
| et Fund Activity | 2,094,858.54 | 32,049.00 | (1,420,909.39) | 45,102.05 | (119,154.67) |
| et Activity | 2,094,858.54 | 32,049.00 | (1,420,909.39) | 45,102.05 | (119,154.67) |
| AV/Shr Price for Day | | | 161.073920 | 123.049713 | 11.698783 |
| nit Purchase/Sale | | 32,049.000 | (8,821.473) | 366.535 | (10,185.219) |
| otal Record Keeping Units | | 17,144,680.470 | 1,172,204.786 | 140,768.793 | 771,717.651 |
| otal Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/28/2001 To 11/28/2001

Run Date: 11/28/2001
Page: 2

| | | Title | Phone | Fax |
|---|---|---|---|---|
| ): | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| :TIVITY | Fidelity Freedom 2010 55900-0-248763-003 | Fidelity Freedom 2020 55901-0-248763-004 | Fidelity Balanced 55893-0-248879-002 | Fidelity Equity Income 55892-0-248703-001 | Vanguard Windsor II 55904-0-736551-002 |
|---|---|---|---|---|---|
| efore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| fter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ayroll Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| anual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ransfers | ( 14,098.22) | ( 77,165.79) | ( 57,407.33) | ( 22,325.61) | ( 123,765.50) |
| ayments-Cash | 0.00 | 0.00 | 0.00 | ( 123,619.13) | ( 33,400.16) |
| ew Loans | 0.00 | ( 4,284.31) | 0.00 | 0.00 | 0.00 |
| et Fund Activity | ( 14,098.22) | ( 81,450.10) | ( 57,407.33) | ( 145,944.74) | ( 157,165.66) |
| et Activity | ( 14,098.22) | ( 81,450.10) | ( 57,407.33) | ( 145,944.74) | ( 157,165.66) |
| AV/Shr Price for Day | 12.709870 | 12.539657 | 201.028246 | 259.382449 | 92.465127 |
| nit Purchase/Sale | ( 1,109.234) | ( 6,495.401) | ( 285.568) | ( 562.662) | ( 1,699.728) |
| otal Record Keeping Units | 2,832,771.378 | 2,879,267.175 | 75,749.105 | 119,452.591 | 327,291.375 |
| otal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/28/2001 To 11/28/2001

Run Date: 11/28/2001
Page: 3

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Vanguard Index 500 55902-0-736420-001 | Fidelity Growth & Income 55894-0-249012-001 | Fidelity Magellan 55895-0-248765-001 | Fidelity Growth Company 55896-0-248833-003 | MSDW Equity Growth 55903-0-467032-004 |
|---|---|---|---|---|---|
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | (79,595.73) | 1,967.17 | 55,139.26 | (47,431.66) | (39,187.81) |
| Payments-Cash | (729.38) | (238,290.92) | 0.00 | (41,029.32) | 0.00 |
| New Loans | (949.93) | (8,803.77) | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | (81,275.04) | (245,107.52) | 55,139.26 | (88,460.98) | (39,187.81) |
| Net Activity | (81,275.04) | (245,107.52) | 55,139.26 | (88,460.98) | (39,187.81) |
| NAV/Shr Price for Day | 84.085082 | 269.043204 | 247.866840 | 297.491206 | 89.779738 |
| Unit Purchase/Sale | (966.580) | (911.034) | 222.455 | (297.356) | (436.488) |
| Total Record Keeping Units | 333,458.338 | 137,172.341 | 153,152.516 | 179,333.779 | 393,350.059 |
| Total Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

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Enron
Daily Transaction Activity Summary
Savings Plan
For 11/28/2001 To 11/28/2001

Run Date: 11/28/2001
Page: 4

| | | Title | Phone | Fax |
|---|---|---|---|---|
| O: | Wilmington Trust<br>Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC<br>Stacey Fratus<br>Monica Hernandez | Morning Contact<br>Morning Contact | (847)295-5000<br>(847)295-5000 | (847)883-8100<br>(847)883-8100 |

| CTIVITY | Fidelity OTC Portfolio 55898-0-249012-002 | Fidelity Overseas 55897-0-248073-001 | MSDW International Eq. 55907-0-467057-001 | T.RowePrice Small Cap. Stock 55905-0-608454-002 | Enron Corp. Stock 55888-0-230048-001 |
|---|---|---|---|---|---|
| efore-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| fter-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ompany Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ayroll Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| anual Loan Payments | | | | | |
| rincipal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| nterest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| otal Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ransfers | 122,535.80 | ( 255.24) | ( 17,157.25) | ( 58,763.54) | 0.00 |
| ayments-Cash | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ew Loans | ( 4,705.99) | 0.00 | 0.00 | 0.00 | 0.00 |
| et Fund Activity | 117,829.81 | ( 255.24) | ( 17,157.25) | ( 58,763.54) | 0.00 |
| et Activity | 117,829.81 | ( 255.24) | ( 17,157.25) | ( 58,763.54) | 0.00 |
| AV/Shr Price for Day | 238.232407 | 143.276481 | 105.732779 | 125.829570 | 4.255439 |
| nit Purchase/Sale | 494.600 | ( 1.781) | ( 162.269) | ( 467.009) | |
| otal Record Keeping Units | 100,753.426 | 73,122.904 | 98,558.953 | 225,519.177 | 2,385,400.461 |
| otal Closing Value | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

Run Date: 11/28/2001
Page: 5

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/28/2001 To 11/28/2001

| | | Title | Phone | Fax |
|---|---|---|---|---|
| ): | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| tOM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| :TIVITY | EOG Stock 55888-0-215051-001 | CSFB Window Settled Cash 55888-0-633183-001 |
|---|---|---|
| ıfore-Tax | 0.00 | 0.00 |
| :ter-Tax | 0.00 | 0.00 |
| mpany Match | 0.00 | 0.00 |
| ıtal Contributions | 0.00 | 0.00 |
| ıyroll Loan Payments | | |
| :incipal | 0.00 | 0.00 |
| ıterest | 0.00 | 0.00 |
| ınual Loan Payments | | |
| :incipal | 0.00 | 0.00 |
| ıterest | 0.00 | 0.00 |
| ıtal Loan Payments | 0.00 | 0.00 |
| ıllovers From ESOP | 0.00 | 0.00 |
| :ansfers | ( 20,681.85) | 234,185.41 |
| ıyments-Cash | ( 95.73) | 0.00 |
| ıw Loans | 0.00 | 0.00 |
| ıt Fund Activity | ( 20,777.58) | 234,185.41 |
| ıt Activity | ( 20,777.58) | 234,185.41 |
| ıV/Shr Price for Day | 151.490416 | |
| ıit Purchase/Sale | ( 137.154) | |
| ıtal Record Keeping Units | 90,477.789 | |
| ıtal Closing Value | [redacted] | [redacted] |

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Enron
Daily Transaction Activity Summary
Savings Plan
For 11/28/2001 To 11/28/2001

Run Date: 11/28/2001
Page: 6

| | | Title | Phone | Fax |
|---|---|---|---|---|
| O: | Wilmington Trust | | | |
| | Sue Sobocinski | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| ROM: | Hewitt Associates LLC | | | |
| | Stacey Pratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| tock Fund Name | Stock Fund Price | Shares Dlvd | Value Dlvd | Cost Dlvd | Equivalent Units |
|---|---|---|---|---|---|

************************************************ NO SHARE DELIVERIES ************************************************

Enron
Daily Transaction Activity Summary
Savings Plan
For 11/29/2001 To 11/29/2001

Run Date: 11/29/2001
Page: 1

| | | Title | Phone | Fax |
|---|---|---|---|---|
| TO: | Wilmington Trust | Wilmington Trust | (302)651-8779 | (302)651-1449 |
| | Sue Sobocinski | | | |
| FROM: | Hewitt Associates LLC | | | |
| | Stacey Fratus | Morning Contact | (847)295-5000 | (847)883-8100 |
| | Monica Hernandez | Morning Contact | (847)295-5000 | (847)883-8100 |

| ACTIVITY | Clearing Account 55887-0 | Loan Fund 55888-0-536815-001 | Stable Asset Fund 55891-0-662704-002 | Pimco Total Return II 55906-0-558251-004 | Fidelity Freedom 2000 55899-0-248763-002 |
|---|---|---|---|---|---|
| Contributions | | | | | |
| Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Adj. Before-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Adj. After-Tax | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Company Match | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Contributions | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Payroll Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Payroll | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Manual Loan Payments | | | | | |
| Principal | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Interest | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Loan Payments | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Rollovers From ESOP | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transfers | 0.00 | 0.00 | 858,070.80 | 100,239.92 | ( 15,092.85) |
| Payments-Cash | 1,061,020.21 | ( 391.18) | ( 647,233.80) | 0.00 | ( 120,541.69) |
| New Loans | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Net Fund Activity | 1,061,020.21 | ( 391.18) | 210,837.00 | 100,239.92 | ( 135,634.55) |
| Net Activity | 1,061,020.21 | ( 391.18) | 210,837.00 | 100,239.92 | ( 135,634.55) |
| NAV/Shr Price for Day | | | 161.101144 | 123.877980 | 11.768737 |
| Unit Purchase/Sale | | ( 391.180) | 1,308.724 | 809.162 | ( 11,524.987) |
| Total Record Keeping Units | | 17,144,289.290 | 1,373,513.510 | 141,577.976 | 760,192.663 |
| Total Closing Value | | [redacted] | [redacted] | [redacted] | [redacted] |

Run Date: 11/29/2001
Page: 2

| | |
|---|---|
| .1449 | |
| .8100 | |
| .8300 | |
| .delity Income '02-001 | Vanguard Windsor II 55904-0-736551-002 |
| 0.00 | 0.00 |
| 0.02) | 0.00 |
| 0.00 | 0.00 |
| 0.01) | 0.00 |
| 0.00 | 0.00 |
| 0.03) | 0.00 |
| 0.00 | 0.00 |
| 0.00 | 0.00 |
| 0.03) | 0.00 |
| 0.00 | 0.00 |
| 0.00 | 0.00 |
| 0.00 | 0.00 |
| 0.00 | 0.00 |
| 116.32) | ( 184,404.56) |
| 231.47) | 0.00 |
| 0.00 | 0.00 |
| 347.82) | ( 184,404.56) |
| 347.82) | ( 184,404.56) |
| .577653 | 93.532099 |
| 96.903) | ( 1,971.564) |
| 155.687 | 325,319.810 |
| [redacted] | [redacted] |

**Responses to Questions For the Official Record**
**Submitted to Karen Ferguson**
**by Ranking Member Fred Thompson**

"Retirement Insecurity: 401(k) Crisis at Enron"

February 5, 2002

**Panel 3 - Karen Ferguson, Director Pension Rights Center:**

1. Please comment on the following proposal put forth by Mr. Olsen of the AARP: Mr. Olsen suggests that one way to increase diversification without providing a disincentive to the employer is to give the employer the choice: the employer can continue to make matching or non-matching contributions in stock, or to include employer stock as an option for employee elective deferrals in the plan.

   Response: The AARP proposal represents a constructive compromise approach that we strongly support. We also support other approaches. For example, employees could be allowed to invest as much as their 401(k) contributions in company stock as they wish, but only be allowed to defer taxes only on that proportion that experts deem to be a prudent allocation. This would be sound tax, as well as sound retirement, policy. There is simply no justification for requiring all taxpayers to subsidize speculative investments.

2. What is the potential that caps on percentages of employer stock in 401(k) plans would discourage companies from offering matching contributions?

   Response: There is no likelihood that caps on percentages of employer stock would discourage companies from offering matching contributions. As we note in our prepared statement, companies provide matches for a variety of reasons. Among others, these include the need to encourage participation by lower-paid employees in order to allow highly-compensated employees to contribute larger amounts to their 401(k)s, and the use of 401(k) matches as a convenient way of disguising cutbacks in traditional employer-paid plans.

3. What specific steps could Congress take to help revitalize the defined benefit pension system?

   Response: The most effective way of revitalizing the defined benefit system would be to repeal recently enacted tax incentives for 401(k)s and ESOPs that are making these plans so attractive to employers that there is little reason for them to maintain more costly defined benefit plans.

At the same time, there is an urgent need for reforms in defined benefit plans that will enhance their credibility and appeal to employees. Employees have been attracted to 401(k)s in part because of their disappointment with what they perceive as unfair features and practices associated with defined benefit plans. Among the improvements that are needed are:

- Adopting a "portability" scheme similar to that implemented in Great Britain. There, employers are given the choice of allowing employees who terminate employment to roll their money into another plan or giving them modest inflation adjustments on amounts remaining in the plan (indexing deferred vested benefits until retirement age).

- Providing for indexing of retirees' benefits. Inflation can reduce retirees' pensions by more than half over their lifetimes. In the past, many large companies routinely provided ad hoc cost of living adjustments, but this practice has largely stopped.

- Ending permitted disparity and backloading formulas that disproportionately disadvantage lower-paid and shorter-service employees, and add extraordinary complexity to plan formulas, making them unintelligible to employees.

- Putting a halt to practices that eliminate promised subsidized early retirement benefits through highly technical maneuvers (such as cash balance conversions, establishment of floor offset plans, and sales of divisions) in order to artificially inflate corporate earnings at the expense of workers' retirement security.

There is also a need for education of employers about the efficiency of employer-paid, pooled, professionally invested, and guaranteed vehicles in delivering retirement benefits to workers, and to develop new types of plans that combine the best features of defined benefit plans with the best features of 401(k)s. To encourage a national public policy dialogue focused on developing innovative concepts for plans that will deliver adequate retirement benefits to all working Americans, the Pension Rights Center has joined with financial institutions, and business, retiree, consumer, women's, and labor groups to launch the "Conversation on Coverage." Information about the Conversation can be found on www.pensioncoverage.net

4. The tax treatment on 401(k)s are akin to the tax treatment on traditional IRAs. If Congress places limitations on stock holdings in 401(k) plans should they make the same changes to IRAs? What is the conceptual difference between 401(k)s and IRAs that justifies a distinction, if you think there is one?

   Response: Unlike IRAs, 401(k)s are sponsored by employers. As a result, when they hold employer stock, they are vulnerable to conflicts of interest. Employers have an institutional interest in encouraging employees to buy their stock, and in not disclosing facts that might lead the employees to sell the stock. Publicly traded companies have the additional conflict between the fiduciary obligations company officers owe to investors generally, and the fiduciary obligations they owe to plan participants. None of these problems are present when employees hold company stock through IRAs.

5. Many employer proposals recommend that Congress place limitations or caps on the percentage of employer stock in participants 401(k) plans. If Congress is going to place limitations on employer stock why not place limitations on the percentage of any other stock a person can hold in their 401(k) plan? What differentiates employer stock from any other stock?

Response: With rare exception employer stock is the only individual stock held by a 401(k). All of the other investments are mutual funds, GICs or similar pooled investments. It is also often the only stock with which the employees have any familiarity. Studies have shown that employees tend to overvalue their own employers stock, and frequently buy it out of a sense of loyalty, or because they feel pressure from their employer. In the Enron situation, company officers are alleged to have made affirmative misrepresentations about the value of the stock.

6. If Congress placed caps on employer stock, would employees be required to divest stock that grew beyond the cap percentage? How would you propose such a limitation be enforced in changing markets? (For example: Assume Congress imposed a 20% limit on employer stock. Mary works for Microsoft and 20% of her 401(k) holdings are invested in Microsoft stock. Microsoft stock rises over time. As a result, more than 20% of Mary s 401(k) assets are now in employer stock. Should Mary be required to sell the Microsoft stock that puts her over the 20% limit?)

Response: Rather than requiring that employees divest company stock when it reached a certain level, it would be more practical simply to bar additional investments in company stock once the ceiling has been reached. Although in a Microsoft-type situation, this might permit greater concentration in company stock than is desirable from a public policy perspective, the existence of the cap would alert employees to the fact that increased diversification is desirable.

**Responses to Questions For the Official Record**
**Submitted to James Klein**
**by Ranking Member Fred Thompson**

"Retirement Insecurity: 401(k) Crisis at Enron"

February 5, 2002

**Panel 3 - James Klein, American Benefits Council**:

Question No. 1: What are the consequences of getting rid of age limitations on the holding period for employer contributions of company stock, particularly regarding the potential effect on companies continuing to provide matching contributions? Please provide the committee with any statistics that would be helpful.

Response: The employer response to prohibiting age limitations and other types of required holding periods for employer contributions of company stock will not be uniform. Each employer has its own reasons for designing its retirement plan the way it does and therefore Congress should recognize that different employers will necessarily respond differently. Some employers would likely accept such a change without significant or any changes to the level of their company match. A 2001 Hewitt Associates survey indicates that there has been a trend toward shorter holding periods. Yet it is just as likely that other employers will respond by reducing the level of matching contributions, while others that might have otherwise increased their match in the future will refrain from doing so. Still other employers may decide to forego company matching contributions altogether. It must be remembered that the company match is a purely voluntary contribution by the employer. Age limitation and other holding periods do not typically apply to the employees' own contributions – but rather to the employers' money that is being contributed to the plan.

It is vital for Congress to recognize that employee ownership of company stock is a goal that has enjoyed bipartisan support for decades. Employers have a legitimate interest in aligning their employees' interests with the interests of the company and to expecting workers to hold the employer match for some period of time. Absent the ability of employers link their company match with these goals, some employers may decide to direct that financial contribution to other types of compensation which, while also beneficial to workers, may nonetheless weaken retirement security.

Question No. 2: Please comment on the following proposal put forth by Mr. Olsen of the AARP: Mr. Olsen suggests that one way to increase diversification without providing a disincentive to the employer is to give the employer the choice: the employer can continue to make matching or non-matching contributions in stock, or to include employer stock as an option for employee elective deferrals in the plan.

Response: The AARP proposal, while admittedly not as administratively complicated as a strict percentage cap, nonetheless effectively acts as a cap. For example, if the 401(k) plan design provides a dollar-for-dollar employer match, then this provision essentially imposes a 50% cap on company stock as a form of contribution to the plan. Obviously, different plan designs will effectively impose different percentage caps, which will also differ according to whether it is the employer or the employee who is making the contribution in the form of company stock. The American Benefits Council believes that such a provision would be highly unpopular with workers who have long viewed the opportunity to be invested in company stock as an opportunity to participate in the financial success of their employer.

Question No. 3: What is the potential that caps on percentages of employer stock in 401(k) plans would discourage companies from offering matching contributions?

Response: The effect of strict percentage caps on company matching contributions is essentially the same as what is described in my responses to the above referenced questions on "holding periods" and the AARP proposal. It will compel some employers to reduce or eliminate matching contributions, and be a statutory imposition that will be resented by many American workers who will correctly view it as a bar on their ability to adequately and prudently accumulate wealth and ensure their retirement income security. I would also add that the ability to make company matching contributions in the form of employer stock is what makes it possible for some employers to make generous matches. Employers know that there will be some years in which making generous cash contributions to the 401(k) plan may cause a financial strain, and thus may be reluctant to design their plan in a way that will commit them to costly cash contributions. However, if they are able to make the contribution in the form of company stock, they can more consistently ensure that they can make a generous contribution. This obviously inures as much, or more, for the benefit of participants as it does for the company itself.

Question No. 4: What specific steps could Congress take to help revitalize the defined benefit pension system?

Response: We encourage Congress to take action to reform the measure that is used for determining defined benefit plan funding. Currently, a formula is applied that uses the 30-year U.S. Treasury bond rate. This rate is exceptionally low and likely to plunge even further since the Treasury Department's decision to terminate the issuance of 30-year Treasury bonds. Sponsoring a defined benefit plan is already a very costly undertaking for employers. As noted in my formal written testimony, the number of defined benefit plans has dropped precipitously over the years in large part due to rules that have made it unduly costly to sponsor a plan. Reform of the statutorily-required rate is important if we are to prevent employers from being forced to fund these plans at a rate that is clearly in excess of what is needed to ensure that these plans are able to meet their commitments to the plans' participants. In addition, we hope that Congress this year will enact a number of provisions that enjoyed broad bipartisan support in both houses of Congress last year, but that were dropped from last year's tax measure for purely procedural reasons.

Question No. 5: Some panelists have claimed that inadequate remedies exist for 401(k) plan participants who are victims of fraud. Assuming Congress corrects any problems that may exist with regard to fiduciary responsibility, would it be satisfactory to require that suits to recover damages on behalf of victims be brought only by the Department of Labor (DOL) with 100% of the damages going to victims?

Responses: I would emphatically disagree with the premise that there are problems that exist with regard to fiduciary responsibilities under current law. ERISA Section 404(a) requires that fiduciaries act prudently and solely in the interest of plan participants. Courts have characterized ERISA's fiduciary standard of care as the "highest known to law". ERISA authorizes suits by participants, fiduciaries and the Department of Labor to recover plan investment losses and to obtain equitable relief on behalf of the plan. Under section 409 of ERISA suits are brought to recover a 401(k) plan's losses and the money recovered on behalf of the plan is allocated to participant accounts. We support efforts to ensure a legal structure that provides the ability to make whole those who have suffered losses without fostering unnecessary litigation.

Question No. 6: Many employer proposals recommend that Congress place limitations or caps on the percentage of employer stock in participants' 401(k) plans. If Congress is going to place limitations on employer stock why not place limitations on the percentage of any other stock a person can hold in their 401(k) plan? What differentiates employer stock from any other stock?

Response: This question raises an extremely important point that has been lost in much of the rhetoric in the aftermath of the Enron bankruptcy. One problem with the proposals to impose caps on employer stock ownership is that it, arguably, paves the way to impose similar limits on other investments. It is true, of course, that with employer stock an individual is invested in the organization for whom he or she works. Thus, the financial failure of that company can potentially mean both the loss of a job as well as the loss of a substantial portion of their 401(k) plan. However, it is equally true that a person who has 50 percent of his or her 401(k) invested in their own company's stock may be much better diversified overall than another worker who only has ten percent of his or her 401(k) invested in company stock. It all depends on the individual circumstances and their retirement and personal savings outside the 401(k) plan. Rigid rules dictating how much a person may have invested in any one investment – whether it is company stock or something else – will not only be unfair but profoundly imprudent on a case by case basis. This is true whether the limitation is due to a percent cap or the "either/or" approach of company match or employee deferrals as proposed by the AARP. We strongly urge the Congress to avoid pursuing this course of action. It may be well-intended, but for many workers and retirees will have very negative, unintended consequences.

Question No. 7: If Congress placed caps on employer stock, would employees be required to divest stock that grew beyond the cap percentage? How would you propose such a limitation be enforced in changing markets? (For example: Assume Congress imposed a 20% limit on employer stock. Mary works for Microsoft and 20% of her 401(k) holdings are invested in Microsoft stock. Microsoft stock rises over time. As a result, more than 20% of Mary's 401(k) assets are now in employer stock. Should Mary be required to sell the Microsoft stock that puts her over the 20% limit?)

Response: This question quite correctly points out one of the perverse results of percentage caps. If the employer stock rises in value, or if the other 401(k) plan investments decline in value it will invariably cause the plan's holdings to fluctuate above and below whatever cap is set. Forcing people to sell their employer stock because it is performing well, or because their other investments are doing poorly, will not only be an administrative nightmare, but will penalize workers and retirees for their successful investments. Clearly, this works completely contrary to the goal of promoting greater retirement security and Congress should not seriously consider this unwise policy proposal.

Responses from Erik Olsen for the Official Record
To Questions From The Honorable Fred Thompson
"Retirement Insecurity: 401(k) Crisis at Enron"

February 5, 2002

1. What is the potential that caps on percentages of employer stock in 401(k) plans would discourage companies from offering matching contributions?

AARP believes that any approach to reducing the excessive concentration of plan investments in company stock should be appropriately sensitive to the voluntary nature of the private pension system. Workers' retirement security should be protected, and as part of this goal, we should encourage employers to both sponsor and contribute to a plan. A hard cap on the amount of employer stock that could be contributed could serve as a disincentive for offering additional matching contributions for the smaller percentage of companies that only match in employer stock. Therefore, we believe a hard cap on employer matching contributions is not the best approach. A better approach is to provide plan sponsors the choice: either provide stock in matching contributions, or offer stock as an option in the plan, but not both. Such a restriction would both meet the test of prudence – better ensuring participants avoid the financial risk associated with high concentrations in employer stock -- while not serving as a disincentive to an employer wishing to provide a matching contribution in company stock.

2. What specific steps could Congress take to help revitalize the defined benefit pension system?

The debate on revitalizing the defined benefit (DB) system has been ongoing for many years. DB plans have the advantage of providing guaranteed benefits, generally paid for by the employer, with insurance protection provided by the Pension Benefit Guaranty Corporation. There are many reasons for the trend away from such plans and towards defined contribution plans, including reduced risk and cost for employers, the desire by a more mobile and shorter-term workforce for a more portable benefit, and the strong returns (until recently) experienced by participants, many of whom became investors for the first time. There are no simple answers to these broader issues, but the fiascos of Enron, WorldCom, and others has focused debate this year on improving the security of defined contribution plans. AARP believes that any measures Congress adopts should recognize the need for broader overall pension coverage among workers and the need for adequate long-term retirement income security.

3. The tax treatment of §401(k) plans is similar to that of IRAs. If Congress places limitations on stock holdings in 401(k) plans, should it make the same changes to IRAs? What is the conceptual difference between 401(k)s and IRAs that justifies a distinction?

While the tax treatment of the plans may be similar, the investment environment is entirely different. The pension system exists within a corporate culture that is, in effect, a "stacked deck" in favor of heavy investment in employer stock. Employers often prefer to provide matching contributions in stock because it is cheaper, and the employer receives added tax benefits from employee investment in company stock. Many employers also believe employee investment in corporate stock aligns the interest of employees with the company, thereby improving productivity. Employers also often prefer stock to be in "friendly hands" in the event of outsider shareholder actions. Thus, employers have a number of added incentives to put large amounts of stock in employees' accounts. In addition, employers often have restrictions limiting the diversification of employer shares provided to their employees. On the participant side, employees often follow the lead of their employers who provide a match in company stock, often viewing such match as an implied endorsement of the stock's soundness. Employees also believe (perhaps through both subtle and not so subtle pressure) that purchasing stock is one way to show their loyalty to their employer. Employees also generally believe their company is a safe investment, because they know the company, generally feel good about the company they work for, and often receive positive reinforcement from company management about the soundness of the company. As a result of all these factors, the 401(k) system, where employer stock is an option, has become dramatically over-concentrated in that emloyer's stock.

Traditional IRAs, on the other hand, are retirement savings plans that individuals establish, fund and manage. They do not exist within the same type of company climate that leads to over-concentration in company stock. As a result, there is no compelling need to place limits on the amount of company stock individual IRA holders have in their accounts.

4. Many employer (sic) proposals recommend that Congress place limitations or caps on the percentage of employer stock in participants' 401(k) plans. If Congress is going to place limitations on employer stock why not place a limitation on the percentage of any other stock a person can hold in their §401(k) plan? What differentiates employer stock from any other stock?

As noted in the previous answer, financial considerations and the corporate culture dramatically influences the selection of a company's own stock and results in the over-concentration of company stock in the plan. While concentration of investment in any one asset violates the fundamental investment principle of diversification, it is the over-concentration in company stock that is the problem that needs to be addressed.

5. If Congress placed caps on employer stock would employees be required to divest stock that grew beyond the cap? How would such a limitation be enforced?

Such divestment is one issue that arises with a hard cap. As a result, there are other approaches that would lead to better diversification without the need to address such questions. For example, the limitation could be on the annual allocation to employer stock, rather than the overall percentage of stock holdings. This approach would limit the amount going in, but then avoid any issues associated with growth beyond a cap. Another alternative, mentioned above, would be to provide the employer a choice between matching an employee contribution with employer stock **or** providing employer stock as an employee investment option in the plan. This approach again avoids issues related to the growth in stock value. Rather, this preferred approach would result in greater diversification over time without discouraging employers from providing company stock in the form of matching contributions. Employees, as currently, would still be responsible for directing their 401(k) investments among the options provided by their employers.

**Answers to Questions for the Official Record**
**Submitted to Stephen Saxon**
**by Ranking Member Fred Thompson**

***"Retirement Insecurity: 401(k) Crisis at Enron"***

**February 5, 2002**

1. ***What is the potential that caps on percentages of employer stock in 401(k) plans would discourage companies from offering matching contributions?***

   There is a very good chance that imposing caps on the percentage of employer stock held in 401(k) plans would cause employers to reduce matching contributions. It is generally cheaper for a company to make matching contributions in employer stock than in cash. Many companies also believe that it is advantageous to match in employer stock because it gives employees an ownership stake in the company and helps align the interests of employers and employees. Many of the cap proposals that have been introduced would provide restrictions on the amount of employer stock that can be held in a participant's account without taking into account the plan sponsor's overall benefit structure or other assets that participants may have. Companies faced with these new restrictions may react by reducing or eliminating their match.

2. ***What specific steps could Congress take to help revitalize the defined benefit pension system?***

   One of the principle reasons for the decline in the number of defined benefit plans in this country was the over-regulation of those plans that occurred in the 1980s and early 1990s. One possible solution would be for Congress to simplify the various funding and other requirements that apply to defined benefit plans. Another possible solution would be for Congress to enact a form of simplified defined benefit plan that could be used by small businesses. A third possible solution would be for Treasury and the IRS to issue guidance clarifying the rules applicable to cash balance plans. Cash balance plans are defined benefit plans that use a separate account for each participant. Until the recent debate over cash balance conversions, cash balance plans were the only form of defined benefit plan that was actually growing and thriving. However, as a result of the debate over the legality over conversions of traditional defined benefit plans to cash balance plans, it has become much more difficult for plan sponsors to maintain cash balance plans. For example, in 1999 Treasury and the IRS placed a moratorium on the issuance of new determination letters on the qualified status of cash balance plans, and no new letters have been issued since that time.

3. ***Many employer proposals recommend that Congress place limitations or caps on the percentage of employer stock in participants' 401(k) plans. If Congress is going to place limitations on employer stock why not place limitations on the percentage of any other stock a person can hold in their 401(k) plan? What differentiates employer stock from any other stock?***

   In many respects, the benefits of diversification apply equally to investments in employer stock and investments in other types of securities. Participants should be provided with education and investment advice on the importance of diversification and the risks of holding a large percentage of assets in any one security. On the other hand, one could argue that it is more important to place limits on investments in employer stock than it is to place limits on investments in other types of securities because participants with large holdings in employer stock have both their retirement security and their job security tied to the financial status of their employer.

4. ***If Congress placed caps on employer stock, would employees be required to divest stock that grew beyond the cap percentage? How would you propose such a limitation be enforced in changing markets? (For example: Assume Congress imposed a 20% limit on employer stock. Mary works for Microsoft and 20% of her 401(k) holdings are invested in Microsoft stock. Microsoft stock rises over time. As a result, more than 20% of Mary's 401(k) assets are now in employer stock. Should Mary be required to sell the Microsoft stock that puts her over the 20% limit?)***

   The answers to these questions would depend on how the cap was drafted. If the cap was based upon the percentage of assets held in the plan as of certain future dates (e.g., the end of each quarter or the end of each year), then a participant's holdings could either exceed the cap or fall below the cap based upon the investment performance of the particular security and market fluctuations. In the facts of your example, Mary could be forced to sell a portion of one of her account's best performing investments if the cap was based upon the value of plan assets as of certain future dates. If, on the other hand, the cap was based upon the percentage of contributions made to an employer stock fund, and not on the percentage of account assets held in employer stock as of certain future dates, the cap would not depend upon investment performance and market fluctuations.

**Professor Susan Stabile Responses to Questions For the Official Record**

**by Ranking Member Fred Thompson**

"Retirement Insecurity: 401(K) Crisis at Enron"

February 5, 2002

**Panel 3- Prof. Susan Stabile, St. John's University Law School:**

*What are the consequences of getting rid of age limitations on the holding period for employer contributions of company stock, particularly regarding the potential effect on companies continuing to provide matching contributions? Please provide the committee with any statistics that would be helpful.*

Most companies that require that matching contributions be made in company stock place limitations on a participant's right to sell shares attributable to matching contributions until the participant reaches a specified age or years of service. According to Congressional Research Service estimates, 34% of plans matching in company stock require the stock to be retained until the participant reaches age 50-55 and only about 15% of plans allow for immediate sale of company stock acquired from matching contributions.

It is difficult to predict the effect of mandating shorter holding periods. It is true that companies like to impose some holding period for accounting purposes and for all of the reasons they believe it desirable to encourage employees to hold company stock. However, for the reasons expressed in response to your question regarding the effect of imposing a cap on employer securities, I do not believe shortening the holding period to one or three years will result in reduced matching contributions by large employers with publicly traded shares. (It is interesting to note in this context that in the wake of Enron, several companies have already announced changes in their 401(k) plan to reduce or eliminate sale restrictions.) It is possible, however, that for some small companies, whose shares are not publicly traded, the need to come up with cash to buy back shares from employees may cause a hardship that could result in reduced matching contributions.

*Please comment on the following proposal put forth by Mr. Olsen of the AARP: Mr. Olsen suggests that one way to increase diversification without providing a disincentive to the employer it to give the employer the choice: the employer can continue to make matching or non-matching contributions in stock, or to include employer stock as an option for employee elective deferrals in the plan.*

It is true that this achieves the goal of increasing diversification without providing a disincentive to employers. However, one of the other concerns that have been raised, specifically in response to the notion of a cap, is restriction of individual choice. If one believes that it is important to employers to be able to make matching contributions in the form of stock (for cash flow and other reasons), the likely result of this proposal is that employees will be restricted from putting any of their own plan contributions into company stock. In contrast with a cap, which preserves individual choice to a significant (but limited) degree, this proposal effectively eliminates employee choice altogether. Having said that, if Congress determines that a cap is not a viable solution, the "either/or" proposal represents an effective means of improving diversification of 401(k) plan assets.

*What is the potential that caps on percentages of employer stock in 401(k) plans would discourage companies from offering matching contributions?*

From the time ERISA was contemplated, claims have been made that increased pension regulation will cause employers to stop offering pension plans or to fund them less generously. I am not persuaded by the claim that a cap on the percentage of employer stock in 401(k) plans would discourage companies from offering matching contributions. From a competitive point of view, employers will fear that not offering matching contributions will make them less attractive compared to other companies that do offer matching contributions. Moreover, matching contributions are used by employers to induce participation in 401(k) plans by their lower-paid employees. That participation in important for two reasons. First, employers need for their older employees to be able to retire to make room for the hiring of new employees, and it is therefore in their interest for employees to build up 401(k) account balances. Second, the Internal Revenue Code requirements for tax qualification of pension plans include nondiscrimination rules designed to ensure that plans not discriminate in favor of highly compensated employees. The rules as they currently exist (the rules having been vastly simplified by the Small Business Job Protection Act of 1996) provide a safe harbor for plans that provide a certain level of employer matching contributions or that provide a minimum nonelective employer contribution. Plans that do not meet the safe harbor have to undergo complex testing that requires extensive record keeping, monitoring and calculations. Moreover, to pass that test, it is still important that lower-income employees participate in the plan. Thus, important motivations for matching contributions remain.

It should also be kept in mind that the percentage limit that has been most frequently discussed – a 20% limitation – is a fairly high percentage. In Enron's case, only about 11% of the total company stock fund was attributable to matching contributions. The rest was attributable to employee elective contributions. Therefore, the cap still allows employers the ability to match in employer stock up to a limit.

*What specific steps could Congress take to help revitalize the defined benefit pension system?*

I fear this is a losing battle. The shift from defined benefit plans to defined contribution plans has taken place over the last two decades in response to both increased regulation and cost of defined benefit plans and increased concern about portability of pension benefits. The fact that defined contribution plans are less heavily regulated than defined benefit plans is one significant disincentive to employers providing defined benefit plans. Recently, the president of the Profit Sharing/401(K) Council of America observed that "ERISA and its 20 years of offspring are largely responsible for making defined-benefit plans economically unfeasible." It is true that increased regulation of defined contribution plans will reduce their comparative advantage over defined benefit plans.

However, it is also the case that a defined contribution structure reduces an employer's pension cost by shifting the burden of contribution to employees and eliminating the risk that employers have to ante up additional contributions is plan investments perform less well than expected. Employers having discovered the ability to lower their pension coasts, it is difficult to see how to reverse the flow.

*Some panelists have claimed that inadequate remedies exist for 401(k) plan participants who are victims of fraud. Assuming Congress corrects any problems that may exist with regard to fiduciary responsibility, would it be satisfactory to require that suits to recover damages on behalf of victims be brought only by the Department of Labor (DOL) with 100% of the damages going to victims?*

Private suits have always been an important part of the enforcement of rights under ERISA. I see no benefit to restricting ERISA's remedial provisions to require that suit be brought only by the DOL, particularly given limited enforcement resources.

Additionally, a significant problem with inadequacy of remedies in an Enron context is the question whether there is a meaningful source of recovery when an employer is bankrupt. That problem is not addressed by changing who brings the enforcement action. It can only be addressed by a regulatory structure that minimizes the risk that large losses will occur.

*Many employer proposals recommend that Congress place limitations or caps on the percentage of employer stock in participants' 401(k) plans. If Congress is going to place limitations on employer stock why not place limitations on the percentage of any other stock a person can hold in their 401(k) plan? What differentiates employer stock from any other stock?*

There are several things that differentiate a proposed limit on company stock from proposed limits in other investments. First, and most importantly, as I suggested in my testimony, there are issues at play with respect to investments in employer securities that do not operate with respect to other investments. Employees overinvest their plan account balances in employer securities because of loyalty to the employer as well as a sense on the part of many employees that they are expected by their employer to invest heavily in company stock and that failure to do so will be perceived by the employer as disloyal. Also, many employees have an overconfidence in their employer and a bias that makes them think that other companies are more likely to experience downturns than their own. In addition, employers also encourage employees to invest in company stock by requiring that matching contributions to be so invested. In plans that require employer matches in company stock, participants direct a higher percentage of their own contributions to that option than in plans where there is no such requirement. Employees appear to interpret matches in employer securities as an endorsement or as implicit investment advice by their employer. These types of factors simply do not operate with respect to other plan investments.

Second, while overconcentration in any single investment is a bad idea, overconcentration of a 401(k) plan in employer securities is worse than an overconcentration in other plan options for two reasons. First, the other plan options tend to be mutual fund rather than stock of a single issuer, giving them at least some diversification protection. Second, as many others have also observed, overinvestment in employer securities puts current job security and future retirement security in the same basket.

*If Congress placed caps on employer stock, would employees be required to divest stock that grew beyond the cap percentage? How would you propose such a limitation be enforced in changing markets? (For example: Assume Congress imposed a 20% limit on employer stock. Mary works for Microsoft and 20% of her 401(k) holdings are invested in Microsoft stock. Microsoft stock rises over time. As a result, more than 20% of Mary's 401(k) assets are now in employer stock. Should Mary be required to sell the Microsoft stock that puts her over the 20% limit?)*

There are two possible ways to handle this. The first would be to phrase the limitation such that no investments may be made in employer securities if, at the time of the proposed investment, 20% (to use the figure in your example) or more of the value of a participants account is attributed to employer securities. This would simply prevent further acquisitions above the 20% limit, but would not require divestiture if growth in the value of the company's stock resulted in a total account balance in excess of 20%. This would be the simplest from an administrative point of view.

The second approach would be to phrase the cap such that it represented an absolute limit on the amount of employer securities that can be held in a participant's account. This approach would require divestiture if growth in the value of the company's stock brought the value of the participant's investment in company stock above the 20% threshold. If this approach were taken, it would be necessary for the plan trustee to sell shares any time a participant's account exceeded 20% and invest the proceeds in an alternative investment option. One way of handling what that option would be is to have participants, at the time they make their initial plan elections, select where an investment option for the investment of any such proceeds. Obviously this creates a greater administrative burden than the first approach.

Besides for the concern with administrative burden, requiring divestiture will be very unpopular with employees. By definition, if a the value of the employer securities in a participant's account goes over 10% because of rising stock value, the divestiture is occurring in a rising market. Just as participants are unhappy about being prevented from selling employer securities when their value is falling, they will be unhappy about watching the forced sale of their employer stock as its value is rising.