

Interoffice
Memorandum

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To: Cliff Baxter
Mark Metts
Rick Causey

From: Jordan Mintz 

Department: Enron Global Finance - Legal

Date: April 16, 2001

Subject: Proposed Sale of Enron Wind to LJM --
Disclosure Issues

This memorandum addresses the disclosure issues (i.e. proxy and financial statements) implicated by a proposed sale by Enron of its ownership in Enron Wind to LJM ("Proposal"). In particular, it summarizes a safe-harbor under the SEC Rules which would avoid any proxy disclosure relating to the Proposal; however, it should also be noted that it is unlikely that compliance with such safe-harbor would also provide us with a basis for not disclosing such transaction for financial statement purposes (i.e. 10Q/10K).

Briefly stated, no disclosure is required in the annual proxy for transactions engaged in by a registrant (i.e. Enron) and a related party (i.e. LJM) if done pursuant to a "competitive bid" process. Although there is scant guidance in this area, it is my judgment that a process like the following would satisfy the definition of a competitive bid:

- A preprinted, unsigned form contract omitting the name of the counterparty and the pricing provisions would be delivered to several active, viable counterparties, including, for example, LJM;
- Each proposed counterparty would be instructed to fill-in pricing and sign the proposed agreement, and indicate any other changes it would propose to make to the preprinted agreement. Each proposed counterparty would be advised that changes to the preprinted agreement would be taken into account by Enron in selecting a winning counterparty; and
- All responses would be due back to Enron at a preset time, delivered to a contact within Enron, remote from the executive officer whose entity may be bidding on the proposal. At the appropriate time, all envelopes would be opened at the same time and the winning counterparty selected from the proposed counterparties responding.

As you know, the foregoing is a process similar to that used by investment banking firms when attempting to sell companies, and it is generally considered competitive by those in the industry. Of course, we could tweak the process to be responsive to our view of appropriate industry standards. Stating the obvious, for this process to pass muster, we would need to ensure that it is monitored carefully to ensure "true competition".

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If the process results in an LJM winning bid, no proxy disclosure would be required. Nevertheless, it appears that the accounting rules would require disclosure independently of the analysis just described.

It may well be that financial statement disclosure – without proxy disclosure -- could appear “too cute” and we may decide to proceed with the proxy disclosure in any event. In that instance, we would be required to provide a description of the Proposal, the related party's (i.e. LJM's) interest in the Proposal, the nature of the interest of the related party, the amount of the transaction and, “where practicable”, the amount such related party may earn in the transaction. In addition, if the Proposal were not viewed as a “sale in the ordinary course” of Enron's business, we would also need to provide the sales price. Although such information can be provided in a fairly “punchy and pithy” fashion, we would obviously be revealing sensitive information.

I am available to discuss any questions or comment you may have; I may be reached at x 37897.

Cc: Rodney Faldyn
Rex Rogers

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