Enron Directors Backed Moving Debt Off Books

By KATHLEEN DAY
and PETER BEHR
Washington Post Staff Writers

Members of Enron Corp.'s board of directors received detailed briefings as early as four years ago about the purpose and structure of controversial partnerships whose losses triggered the company's fall into bankruptcy, according to minutes of the meetings.

The minutes, which cover four board meetings in 1997 and 1999 and three meetings of the board's finance committee in 2000, suggest that board members approved aggressive accounting actions, including moving debt off the company books.

A dozen congressional committees as well as the Justice Department and the Securities and Exchange Commission are investigating Enron's collapse, which cost investors and employees billions of dollars. A focus of the inquiries is whether Enron hid debt and inflated its profits by using the private partnerships run by its chief financial officer.

In other Enron-related news yesterday, the General Accounting Office announced that it would sue the White House for access to records of Vice President Cheney's meetings with Enron and other industry interests that sought to influence the administration's energy policy last year. And Stephen Cooper, the interim head of Enron, said he was optimistic the company could survive, though in

See ENRON, *A5, Col. 1*

■ **GAO to sue Cheney for energy records.** | *Page A4*

■ **Credit-rating agencies face new scrutiny.** | *Page E1*

Enron Directors Aware of Deals for Years

ENRON, From A1

a much diminished form.

Individual Enron board members, who themselves are being sued and investigated, have said little publicly about their role in the transactions that toppled the company. The minutes, made available to The Washington Post by a source critical of the board, suggest that the partnerships were a key part of Enron's growth strategy and show they were regularly reviewed by the directors.

The copies of the minutes do not cover every board meeting and do not include documents that are referred to as being attached to the summaries of the board's actions.

When it was reported last fall that Andrew Fastow, the Enron CFO, made $30 million running partnerships with names such as LJM, Raptor and JEDI, then-chairman Kenneth L. Lay announced that the board was setting up a special committee to investigate. The minutes show that members of that special committee attended board meetings in which Fastow described the intricacy of the entities.

Sources said the committee's report, which is expected to be completed as early as tomorrow, will say that while the Enron board approved the partnerships, management and auditors withheld key information from them. That is expected to be the key element of the defense that will be offered by Lay and board member William C. Powers Jr. when they testify before Congress on Monday, sources said. Last night, Robert Bennett, a Washington lawyer representing Enron, gave every indication that would be the case.

"While the board of directors, including Mr. Lay, were aware that these special partnership entities were being set up, which were being run by Mr. Fastow, there is a great deal of information regarding their operation and execution that was unknown to the board of directors," Bennett said.

At an Oct. 11, 1999, board meeting, Fastow discussed the company's mix of "on-balance and off-balance sheet debt," according to the minutes. At another meeting on May 1, 2000, Fastow told board members about the risk of "accounting scrutiny" on the Raptor partnership.

A board resolution in October 1999 said one purpose of the LJM2 partnership was to create "a potential ready purchaser of the company's businesses and assets." A chart labeled "LJM2 Update," attached to the agenda for a May 2000 finance committee meeting, said the partnership had made seven investments, all purchased from Enron.

Enron has disclosed that the board waived the company's conflict-of-interest rules to let Fastow oversee the partnerships.

The board's special committee hired William R. McLucas, former head of enforcement at the SEC, to do the investigation and write a report for the committee. The report is expected to be released before Lay, who resigned last week, and board member Powers, who is also dean of the University of Texas law school, testify before Congress on Monday.

Until now, Congress has focused on the role Enron's outside auditor, Arthur Andersen, played in the company's collapse and the reported destruction by Andersen executives of Enron-related documents. Monday's hearings are expected to zero in on the behavior of Enron officials, including the board.

The outside directors are expected, as part of their defense, to push the focus back on Andersen, sources say. They will point, for example, to portions of board minutes that say Andersen "had spent considerable time analyzing . . . the governance structure" of one of the partnerships, LJM2, and "was comfortable with the proposed transaction."

Minutes from October 1999 and October 2000 say the board ordered several safeguards be implemented to maintain control of the partnerships. One was allowing Lay or the board to remove Fastow from one partnership, LJM, at any time. Another was directing then-Enron chief executive Jeffrey K. Skilling and others to review all transactions between Enron and LJM. And Skilling was to review Fastow's "economic interest" in the partnership.

Bennett said, "We have learned that many of the procedures that were put into place to ensure the appropriate operation of these entities were not complied with, without the knowledge of the board."

Patrick McGurn of Institutional Shareholder Services Inc. of Rockville, which advises large shareholders on corporate-governance issues, said last night that the minutes seem to provide more evidence that board members were fully informed of the company's aggressive financial strategies.

"If that's not the case, the directors better start talking and start talking now. Every step along the way it seems this board had the opportunity to say no to the partnerships, to the waiver of the ethics code, and each time they had an opportunity to take the right fork in the road, they took the wrong fork."

The Oct. 12, 1999, minutes show that outside director Herbert Winokur—now a member of the board's special investigating committee—recommended that the board approve Fastow's participation in the LJM2 partnership.

McGurn said, "The first principle of an investigation is that the people who presumably might be held responsible at the end of the day can't investigate themselves."

The other two members of the special committee—Powers and Raymond S. Troubh, a New York consultant—had no involvement with the company when the formation of the off-balance-sheet entities took place, sources close to the company said.

W. Neil Eggleston, an attorney for the outside directors of the board, said Winokur has no conflict of interest in serving on that special committee, despite his role in approving the partnership deals. "It was important for the special committee to render its report quickly and Mr. Winokur's participation provided continuity and speed to the special committee's efforts," Eggleston said.

The board minutes show that as early as Dec. 9, 1997, Enron's executive committee approved a buyout—that included a corporate guarantee of $633 million—of the interest of the California public employees pension fund in the JEDI partnership.

At an Aug. 7, 2000, meeting of the finance committee, chaired by Winokur, the off-balance-sheet partnerships are described as "the vehicles the company was utilizing to manage its balance sheet debt." Directors Wendy Gramm and Lay were among other board members that also attended the meeting.

At a special board meeting on June 28, 1999, Lay called on Skilling to discuss a proposed investment partnership. "Mr. Skilling noted that due to changes in the accounting treatment of off-balance-sheet transactions, the company had been analyzing new types of financing vehicles. He called on Mr. Fastow to discuss the proposal."

Skilling resigned suddenly in August. Fastow was ousted in October.

The LJM partnerships were specifically cited by the company last fall when it admitted violating some accounting standards, resulting in a $586 million overstatement of its profits between 1997 and 2001.

The excerpts that became available yesterday give no hint that board members had questions or qualms about the accounting maneuvers, with the exception of Fastow's dual role as Enron's chief financial officer and LJM's manager.

Staff writers David Hilzenrath, Albert B. Crenshaw and Carrie Johnson contributed to this report. Peter Behr reported from Houston.

■ New CEO says he believes a smaller Enron can survive. | *Page E3*