

MEMORANDUM

TO: Enron Files

FROM: Paul W. Connell

DATE: December 17, 2001

RE: Interview of Ryan Siurek, Senior Director, Transaction Support

On December 11, 2001, Chuck Davidow, David Cohen and Paul Connell of Wilmer, Cutler & Pickering ("WCP") and Tom Omberg and Leslie Knowlton of Deloitte & Touche (an accounting firm retained by WCP), spoke with Ryan Siurek, Senior Director, Transaction Support, at Enron's Houston headquarters to gather information from him in order to allow WCP to provide legal advice to the Special Committee of Enron's Board of Directors. The purpose of the interview was to explore Siurek's knowledge of certain related-party transactions.

This memorandum has been prepared by counsel in anticipation of possible litigation arising from a Securities and Exchange Commission ("SEC") investigation and any parallel or related proceedings. This memorandum incorporates the mental impressions, analyses and opinions of counsel. As such, this memorandum is intended solely to assist counsel in providing legal representation and advice to the Special Committee of Enron's Board of Directors, and is not intended to provide a substantially verbatim recital of Siurek's statements. The interview was based on WCP's understanding of the facts and review of documents as of the date of the interview. Furthermore, Siurek has not reviewed this memorandum. Therefore, this memorandum may contain inaccuracies and the following discussion of certain events may be incomplete or lack context.

At the outset, Cohen explained that WCP represented the Special Committee appointed by the Board to investigate certain transactions between Enron and related parties, and we were speaking to him as part of that investigation. Cohen stated that we did not represent Enron's officers or employees, including him, that, in our view, the conversation was privileged but it was the Special Committee's (or Enron's) privilege, and that the Special Committee or Enron could decide what to do with the privilege, not him. Cohen stated that Siurek should anticipate that anything he told us would be conveyed to the Special Committee, and that the information could be communicated to others, such as the Board, others associated with Enron, and the Government.

Cohen stated that there was an SEC investigation, that the company was cooperating fully with the SEC, and that there was a reasonable possibility that information he provided will be conveyed to them. Siurek was represented by J. C. Nickens during the interview.

Background/Education

Siurek graduated from Texas A&M with a B.A. in accounting in 1993 and an M.A. in 1994. After graduation, Siurek worked for one year as an intern for the FASB on a special accounting and derivatives project.¹ Siurek joined Arthur Andersen in June 1995 and worked in the audit group for approximately one year. During this time, Siurek worked on the Enron engagement. Siurek then moved to AA's energy trading and risk management consulting group. In this role, he worked for clients such as Enron, Dynegy and Aquila. In 1999, Siurek followed Wes Cowell, an AA partner, to Enron. Siurek was officially hired by Bob Butts and was assigned to the transaction support group.

As an employee in transaction support, Siurek reported to Butts and was generally responsible for helping anyone who needed advice with accounting issues. Ben Glisan and Bill Brown often brought him projects to work on.

Raptor

Siurek first became aware of Raptor in December 1999 when Glisan began talking to him about it. He worked on Raptor almost exclusively from January until April 2000, but did some consulting on the RythmsNet wind-up during that time as well. His work on Raptor was much more difficult conceptually than RythmsNet, and Siurek spent most of his time on Raptor.

Siurek understood that the Raptor idea came into being through discussions among Andy Fastow, Glisan and others who were trying to find a way to use the embedded value of Enron stock in the Whitewing structure. At first, they considered setting up a charitable trust so Enron could assign the excess value to a charity and take the tax deductions. These discussions ultimately led to the idea of using the excess value of the Enron stock in Whitewing to hedge volatility of other assets held by Enron. At the time, they were primarily discussing technology investments.

The Raptor structure was worked out over time as people brainstormed in a room using a white-board to sketch out ideas and address roadblocks as the discussion went on.

Siurek explained that Raptor was essentially a way to use unrealized appreciated Enron stock so the company could enter into derivative transactions and thereby hedge its exposure to some of its more volatile assets. Raptor was designed to hedge against this

¹None of Siurek's work on derivatives at the FASB related to his later work on the Raptor vehicles.

volatility in two ways. First, because the team believed that the tech investments would go up in value, Enron wanted to find a way to capture the upside profit. Second, Enron wanted to hedge against any downside exposure if the investment declined in value. The team was particularly concerned about the publicly traded tech investments because it is very difficult to know what they would be worth at the end of each quarter or what their impact would be on the company's income statement.

Enron decided not to use investment banks to hedge the investments because the banks did not like the exposure they would have faced. Siurek said that they had thought that possibly the originators in the finance group had discussions with investment banks but he said that he had no specific knowledge on this issue.

LJM became a possible source of third party equity approximately three months into the development of the Raptor structure. To Siurek, this was an ancillary issue. He was far more concerned with the structural accounting issues for Raptor. He did not deal directly with Fastow or speak with him about LJM until many months after the Raptor structure was in operation. He did not spend much time with the LJM component of any Raptor deal.

The main people involved in setting up Raptor in addition to Siurek were Ben Glisan, Trushar Patel, Ann Marie Tiller and Scott Sefton. In addition, many attorneys from Vinson & Elkins were involved. The primary contacts at V&E were Ron Astin and Mark Spradling.

Siurek's role in Raptor was largely the same as any other deal. He would be told of a concept, consult with the business units, make sure the accounting worked, consult with AA to make sure they were comfortable, and speak with Rodney Faldyn and/or Rick Causey. He would try to develop solutions if there were problems with the structural details.

AA's involvement in significant deals (including Raptor) was "real time." They were presented with the concepts and drafts early in the development of the vehicle and were provided documents throughout. Enron usually would not go forward without first getting comments from AA. Siurek said that he talked to AA about the Raptor structure beginning in January 2000 and they were included in all document draft distributions. Siurek wanted AA involved early because Raptor had many accounting issues due to its complexity, particularly as it related to the Whitewing structure and the Peregrine forwards. AA provided input on many issues that were unrelated to the LJM components of Raptor deals.

LJM2 Governance Issues

As Raptor was being set up, issues came up with regard to Fastow's role in LJM. Siurek recalled that an Advisory Committee was set up to address the extent of Fastow's control of LJM2. From Siurek's perspective, LJM was largely irrelevant because Raptor

was set up to work with any third party and the capital for the vehicle did not necessarily even have to be split 97%-3%.

Memo re: LJMII/Talon Governance. Siurek was shown a memo that bears a December 10, 2001 date stamp², which he prepared regarding LJM2 Governance issues. The memo describes a series of LJM governance concerns raised by AA. The issues raised in the memo were resolved prior to the Raptor I closing.

With respect to issue #1 in the memo dealing with the information the Advisory Committee should receive regarding LJM transactions, AA ultimately changed its opinion and, instead of requiring the that general partner (Fastow) provide the Advisory Committee with information relating to any transaction between LJM2 and Enron or any Enron subsidiary, accepted a structure that limited Fastow's ability to engage in derivative transactions without consulting the Advisory Committee so long as the value of the derivatives did not exceed \$1 billion in notional value. With respect to issue #2 and #3 dealing with the election or appointment of Advisory Committee members and how the General Partner could be removed, AA did not require a "breakdown of the LP investors and their committed capital amounts" but allowed LJM to give it and Enron a list of investors by category, e.g., investment funds, individuals, etc.

Memo re: Project Raptor. Siurek also was shown a memo he drafted in April 2000 summarizing the Raptor transaction. The memo had been an ongoing draft and was finalized when the transaction was completed. Siurek was asked about an entry on page four which stated "we have discussed this issue with the senior officer and have committed to making the aforementioned changes by June 30, 2000, in order to avoid consolidation of Talon. We have discussed these issues with AA and determined that those changes will cure all remaining outstanding governance issues related to LJM2." Siurek explained that AA discussed the governance issues with LJM and that AA Partner Dave Duncan personally met with Fastow. According to Siurek, Fastow showed Duncan documents reflecting changes in the governance structure and this lead to AA's approval. As far as Siurek knew, no copies of these documents were given to Duncan and Enron was not provided copies. However, AA told Siurek that they got comfortable with the governance issues.

Another entry on the bottom of page four of the same memo stated that the Advisory Committee must "acknowledge the execution of the purchase of 100% of the voting equity in Talon. The Advisory Committee should further acknowledge that the general partner of LJM will negotiate derivative transactions entered into with Harrier up to and including a maximum notional amount of \$1 billion." Siurek did not think Enron ever received these acknowledgements.

Page nine of the memo refers to LJM being able to demand cash to settle the put option. According to Siurek, this is an error in the memo. He said that LJM could not

² The memo was prepared well before December 10, 2001. It is dated as such because that is the date that WCP printed it out. Siurek could not recall the actual date it was completed but was sure that it was done prior to the closing on Raptor I.

demand cash to settle the put. He noted that Enron usually paid cash to settle these options anyway.

Initial Put Option

The initial put option in Raptor was Glisan's way of providing a means to create GAAP earnings within the Raptor vehicles (but not guarantee it) so that LJM could get a return on its investment in a short time frame. If the transaction did not work (i.e., if Enron stock declined in value), Enron would be entitled to keep LJM's \$30 million investment and also get up to an additional \$41 million from the option. Siurek did not know if anyone did an analysis to figure out how much Enron would receive should its stock decline in price, however, and he was not a party to the negotiations over LJM's rate of return for its investment. He said that the negotiated return and the stock price drove the number of shares under the put options.

Enron did not consider doing a call option because it felt that its stock was likely to appreciate and that this would be a bad bet. Enron considered the public perception of how it would look when it disclosed that it was buying a put option on its own stock. Siurek noted that the put was disclosed in Enron's filings.

Project Raptor presentation. Siurek was shown a document that is labeled Project Raptor and dated October 2001. Siurek first began drafting this historical memo on Raptor in June 2001 and updated it through October. Page nine of the document refers to the Share Settled Puts between Enron and LJM. Siurek included this page at Glisan's specific request.

The price for the premium per share for Raptor I, II and IV was based on information on Bloomberg as of the closing date for each deal. Trushar Patei would have been the person who got this data. Siurek did not know who negotiated the strike price, whether it was a negotiated item, or if LJM even was paying attention to it. Enron consulted AA to make sure the strike price for the option was appropriate, however.

All of these puts terminated early. Siurek said that Fastow and Causey were typically the ones negotiating and would have made the decision to terminate the puts. The termination price paid by Enron was based on the Bloomberg screen price as of that day. Enron treated the \$41 million paid to LJM as a return on capital after consulting with AA. At this time, he did not know how LJM viewed the \$41 million.

Fees Paid to LJM

Enron was required to reimburse LJM for its expenses such as legal and accounting fees. This led to some concern within Enron that these payments could be viewed as a return of capital which would bring LJM below the 3% threshold. Enron consulted AA for an opinion. After consulting with its National Office and other Big 5

accounting firms. AA's consensus was that if Enron paid LJM's vendors directly rather than reimbursing LJM, the minimum required equity necessary to substantiate Talon as an unconsolidated SPE would be grossed up by 3% of the amount of such fees. Siurek did not know of any other management fees paid to LJM after the Raptor vehicles were in place but believed that Causey may have some information with respect to this issue.

Davidow asked Siurek whether he knew anything about a \$250,000 management fee paid to LJM. Siurek replied that he was aware of a management fee agreement entered into after setting up all of the Raptor vehicles, but had no specific knowledge of the terms. He suggested asking Causey about this agreement.

Additional LJM Capital Contributions

LJM made additional capital contributions of \$6 million to Raptor I and \$1.1 million to Raptor II. These contributions were used to create additional derivative notional capacity within the vehicles. Siurek said that he thought the amounts were negotiated.

After LJM received its initial distribution, its return was decreased to 12.5% on the additional \$6 million capital contribution. Omberg asked Siurek whether LJM maintained sufficient rewards associated with its equity investments after the initial distribution was received. Siurek didn't think that AA really looked at this issue, and said that AA was generally more focused on the risk side of the substantive equity requirements.

Investment Bank Pitches

Siurek did not know if an investment bank came up with the Raptor structure and pitched it to Enron. At one point, Glisan told Siurek that Solomon Smith Barney had pitched a similar hedging vehicle, and Credit Suisse First Boston also pitched an off balance sheet structure backed by equity. Investment banks were always presenting different hedging vehicles to Enron.

LJM's Fair Value Put

LJM had the right to put its LLC interest back to Enron at fair value within six months of the creation of each Raptor vehicle. Siurek did not know how the LJM fair value puts were to be valued but believed that there was a process in place to do it. This became a moot point anyway because the these options were never exercised.

Collar Transactions - March 2001

PriceWaterhouseCoopers ("PWC") issued a fairness opinion on May 24, 2000, regarding the transaction between LJM and Enron. The fairness opinion addressed the discount on Enron's stock as a result of the restrictions placed on the stock. The restrictions prevented LJM from selling, pledging or hedging the stock. Share collar transactions covering the original number of shares of Enron stock were entered into with each of the Raptor vehicles subsequent to formation. In addition, when the Raptor vehicles were restructured in March 2001 by contributing contracts on 12 million additional shares of restricted Enron stock, Enron simultaneously entered into share collar transactions with LJM with a floor of \$61. Enron lifted the restrictions to allow for these collar transactions. The fairness opinion from PWC was not updated subsequent to May 24, 2000, even though no collars on the restricted Enron stock were contemplated at the time PWC issued its fairness opinion. Siurek noted that AA did not ask Enron for an update to the fairness opinion.

Omberg asked if the company considered whether using the discounted value for the 12 million shares was appropriate in light of the collar transactions. Siurek said that the new contracts for additional shares of Enron stock in combination with the collar transactions were done to get additional credit capacity of approximately \$13 per share times 12 million shares. Both AA's and Enron's research groups looked at using a discount, even though the restriction that created the discount was lifted to enter into the collar transactions. Enron's research group also made changes to the terms of the March 2001 restructure to make sure that the discount could be used.

A number of documents demonstrate that AA knew about the collars and the restrictions on the stock: Siurek's memos, documents sent to AA by Siurek, emails between AA and Siurek, and AA's very large invoices to Enron.

The discount on Enron's stock in the collar was determined in part by someone in Enron's research group (quantitative analysis). Vince Kaminsky, Head of Research, or one of his subordinates has the most information about the discount. According to Siurek, Kaminsky had issues with the Raptor vehicles because he was not comfortable with the related-party issues.

Assets Hedged

Siurek did not have any role in selecting the assets Enron would put into the Raptor vehicles. He was involved only to the extent that ancillary questions or issues came up. Generally, each business unit would pick the assets, but Gordon McKillup played a key role in this aspect of the business. McKillup also performed the credit capacity tests for the vehicles based upon the formula provided to him by AA and Siurek. He noted that AA performed a detailed audit of McKillup's daily position reports and credit capacity calculation at the time of the March 2001 restructure.

LJM had complete discretion to accept or reject proposed derivative transactions. Siurek did not know who, if anyone at Enron, monitored the \$1 billion notional limit on the amount of the derivatives for LJM, but he did not see this as an issue because it would not have been possible for LJM to exceed the limit because the initial credit capacity and 3% equity test did not allow for more than that.

The assets put into the Raptor vehicles did not perform well but there was no way of knowing before hand that they would do as poorly as they did. Siurek was not privy to any conversations to the effect that the assets in Raptor were "dogs." The fact that the asset's values declined was not a surprise to him because many of the assets were dot-coms. Raptor was designed to protect against this downside risk but the problems with the vehicles developed when the Enron stock also began to decline.

All of the assets were put into Raptor I at one time as of August 3, 2000, because AA required that Enron perform the 3% equity test every time it wanted to enter into a derivative transaction. Thus, all of the assets were put in at the same time to avoid having to perform this test repeatedly.

Cost Basis Investment

Siurek explained that AA determined that the cost method for reporting Enron's investment in the Raptor vehicles was appropriate because Enron had less than a 5% investment and had no voting rights. They looked at EITF Topic D-46 and APB Opinion No. 18. They made sure that the loan documents only allowed for Enron to have normal creditor rights in order to maintain the cost basis treatment.

Raptor III

Siurek did not play a very big role in the creation of Raptor III. He consulted on some issues and found it to be an odd structure compared to the other Raptors. Raptor III was put together on a very short time frame so Enron could hedge the total return swaps on monetizations of The New Power Company's ("TNPC") warrants immediately upon TNPC's IPO. Although Raptor III did poorly, Enron never contemplated that TNPC shares would fall all the way to \$1.00 per share.

The \$259 million note was reduced to approximately \$50 million at the time of the unwind of the Raptor vehicles in September 2001. Siurek explained that Enron had no basis in the note because the transaction did not meet the FAS 125 monetization/sale requirements. Although Siurek had no specific knowledge, he was told that the monetization failed because they were unable to obtain the required legal opinion. He noted that the transaction also could have failed to meet the monetization/sale requirements because they did not receive cash.

Cross-Collateralization in First Quarter 2001

Enron restructured several of the Raptor vehicles during the first quarter of 2001 so Enron could maximize its credit capacity. Gordon McKillup developed a spreadsheet to calculate the number of Enron shares that need to be put into each Raptor vehicle for this purpose. AA also was very involved in this process. From Enron's perspective, the restructuring was a way to use the Raptors that still had equity to soak up the losses in the poorly performing ones and had the effect of creating one consolidated Raptor vehicle.

At first, AA approved the cross-collateralizations, but subsequently changed its opinion. Siurek was not a party to the discussions with AA but he believed that AA failed to fully consult with its Chicago office about the restructuring. Enron assumed the proposed cross-collateralization had been thoroughly reviewed by the Chicago office due to the size of the bills received from AA around that time.

To maintain deconsolidation of the vehicles, LJM had to maintain equity at risk even after the cross-collateralization. Enron ran sensitivities to determine whether, after the restructure, LJM would still have a sufficient chance to lose its equity. Siurek explained that they used AA's test, which he believed required a 20% chance of loss. The results showed that if Enron's stock declined to \$23 or below after the cross-collateralization, LJM would have lost its equity in all four of the Raptor vehicles.

Siurek referred to two graphs from his October 2001 memo, titled "Pre-Restructuring Credit Capacity" and "Post-Restructuring Credit Capacity," which showed the net benefit of the restructure transaction in March 2001. The graphs showed that the credit capacity of the Raptor vehicles (combined) had a \$366 million impairment at the date of the restructure transaction. This is the amount that would have been recorded if they had not been restructured. Siurek explained that AA was aware of this amount and was consulted about the restructure transaction. They determined that the restructure effectively removed the \$366 million impairment. They did not view the restructure transaction as prospective only, which would have required that the \$366 million loss be recorded.

Disclosure of Raptor Transactions

The responsibility for Enron 10-K's and 10-Q's falls on the financial reporting group, led by Bob Butts. This group does all of the drafting but requests comments from the appropriate business group for footnotes or related-party transactions. Siurek reviewed descriptions of transactions for accuracy, but was not responsible for determining what should be disclosed. Siurek said that the final determination for disclosure issues fell to AA.

CHEWCO

Siurek had no knowledge of LJM's transfer of Osprey certificates to CHEWCO and had no knowledge if AA had a problem with it. He was not involved with CHEWCO being brought back onto the books.