ATTACHMENT B

AFFIDAVIT

I, OMER J. MEISEL, being duly sworn, state:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been so employed since 1999. In January 2002, I was assigned to the Enron Task Force in Washington, D.C. and have participated since then in an investigation into the circumstances surrounding the financial collapse of the Enron Corp. ("Enron"). Prior to that, I was assigned to the San Francisco Field Division of the FBI, where I conducted numerous investigations into various types of fraud, including insider trading, market manipulation, money laundering, mail and wire fraud, and bank fraud. In addition, I had extensive experience in the investigation of securities fraud prior to joining the FBI. From 1995 through 1997, I worked in the Enforcement Division of the Denver, Colorado office of the United States Securities and Exchange Commission ("SEC"), and conducted investigations into various types of securities fraud, including insider trading, market manipulation, and offering fraud. From 1997 through 1999, I worked at the National Association of Securities Dealers ("NASD"), where I was responsible for investigating violations of federal securities laws and NASD rules and regulations. As a result of my experience, I am familiar with the securities laws and various types of securities fraud, as well as mail and wire fraud, and money laundering schemes.

2. To date, the Enron investigation has resulted in several prosecutions and convictions in the United States District Court for the Southern District of Texas. In April 2002, David Duncan, the lead Arthur Andersen LLP ("Andersen") audit partner assigned to the Enron engagement, pled guilty to obstructing an SEC investigation relating to Enron. In June 2002,

Andersen itself was convicted at a jury trial of obstructing that SEC investigation. In August 2002, former Enron Managing Director Michael Kopper pled guilty to two counts of conspiracy to commit wire fraud and money laundering, pursuant to a cooperation agreement, and agreed to forfeit $12 million in criminal proceeds. In September 2002, a grand jury charged three bankers formerly employed by National Westminster Bank ("NatWest") with seven counts of wire fraud in connection with a scheme involving Enron employees. Investigation into numerous other matters remains ongoing.

Sources of Information

3. The information used to support this Affidavit was derived from, among other sources: Special Agents of the FBI and the Internal Revenue Service ("IRS"), Criminal Investigation Division; statements of confidential sources and witnesses; documents obtained pursuant to a Department of Justice access request made to the SEC; SEC depositions and interviews; federal grand jury subpoenas; government requests to third parties; public records searches; an FBI search at Enron's corporate headquarters in Houston, Texas; and the Report of Investigation by the Special Investigative Committee of the Board of Directors of Enron, William Powers, Chairman, February 1, 2002 and its supporting documents.[1]

Confidential Sources

4. During the course of this investigation, numerous confidential sources have been debriefed, who corroborate each other and are also corroborated by documents and other

[1] I have included in this Affidavit only those facts that I believe are relevant to the determination of probable cause to believe that the criminal offenses described here were committed by ANDREW S. FASTOW. I have not included all of the facts known to me concerning criminal activity involving FASTOW or others. Moreover, to the extent that this Affidavit contains statements by confidential sources and others, those statements are set forth only in part and in substance and are not intended to be verbatim.

evidence. CS-1 is a former Enron and LJM employee. CS-2 is a former Enron executive. CS-3 and CS-5 are former Enron employees who worked on the Nigerian Barge transaction. CS-4 is an employee of a leading financial institution (the "Financial Institution") who was involved in the Nigerian Barge transaction. CS-6 is a former Enron employee who worked on the Cuiaba project. CS-7 is an Enron employee who worked on the Cuiaba project. CS-8 is a former employee of the Financial Institution who was involved in the Nigerian Barge transaction. CS-9 and CS-11 were nominee investors for FASTOW. CS-10 is a former Enron employee who was also a nominee investor for FASTOW.

INTRODUCTION

5. At all times relevant to this Affidavit, Enron was a publicly-traded Oregon corporation with its headquarters in Houston, Texas. Enron's stock was traded on the New York Stock Exchange, and Enron filed quarterly and annual financial statements with the SEC. Among other operations, Enron was the nation's largest natural gas and electricity marketer with reported annual revenue of more than $150 billion. Enron became number seven on the list of *Fortune 500* companies. By December 2, 2001, when it filed for bankruptcy, Enron's stock price had dropped in less than a year from more than $80 per share to less than $1.

6. The defendant ANDREW S. FASTOW is a resident of Houston, Texas. FASTOW was Enron's Chief Financial Officer ("CFO") from March 1998 until October 24, 2001. As CFO, FASTOW was responsible for overseeing many of Enron's financial activities. FASTOW reported directly to Enron's Chief Executive Officer ("CEO").

7. At times relevant to this Affidavit, Kopper reported directly to FASTOW. Kopper held various executive positions at Enron and also served in executive positions at certain special

purpose entities ("SPEs") created by Enron. As noted, Kopper has pled guilty and admitted liability in connection with crimes committed while at Enron and the SPEs. Kopper is cooperating in this investigation.

8. Enron, like many other corporations, required its employees to sign a confidentiality agreement and acknowledge compliance with the company's code of ethics. Enron's confidentiality agreement required employees to disclose business activities outside Enron that could be considered a conflict of interest, among other things. Similarly, Enron's code of ethics prohibited employees from engaging in, among other activities, investments that could be considered to conflict with Enron's interests, without obtaining a waiver from Enron. FASTOW signed the confidentiality agreement and the certificate of compliance with Enron's code of ethics. As an Enron employee and executive officer, FASTOW owed a duty to Enron and its shareholders to provide the company with his honest services.

Enron's Use of Special Purpose Entities

9. Since at least the early 1990's according to Enron's own records, Enron engaged in transactions with other entities that were designed to improve Enron's balance sheet. Enron's treatment of these entities for financial statement purposes was subject to accounting rules that governed whether an entity should be consolidated onto Enron's balance sheet, or treated as an investment by Enron in a separate entity not under Enron's control. Enron management preferred the latter result, known as "off-balance-sheet," because it enabled Enron to present itself more attractively as measured by criteria favored by Wall Street investment analysts, credit rating agencies, and others.

10. Enron engaged in a myriad of transactions that were structured to achieve off-

balance-sheet treatment. Many of those transactions were structured using SPEs. Under applicable accounting rules, an SPE could receive off-balance-sheet treatment only if independent third-party investors contributed at least three-percent of the SPE's capital, and the third-party investment was genuinely at risk, among other requirements. If the third party was not truly independent, or its investment not truly at risk, consolidation of the SPE onto Enron's balance sheet was required.

11. Kopper has admitted through his guilty plea and otherwise that starting in at least early 1997, he, FASTOW, and others devised a scheme to defraud Enron and its shareholders through transactions with certain Enron SPEs. Enron employees, including FASTOW, willingly engaged in these transactions in order to achieve accounting goals and to circumvent regulatory requirements by having an SPE do what Enron itself could not. As FASTOW and others knew, some of these SPEs were not eligible for off-balance-sheet treatment because the supposedly independent third party investors were controlled by FASTOW, Kopper, and others, because the three percent outside equity requirement was not satisfied, and because the third party investment was not truly at risk. Thus, these SPEs should have been consolidated onto Enron's balance sheet. Further, FASTOW, Kopper, and others took advantage of their simultaneous influence over Enron's business operations and the SPEs as a means secretly and unlawfully to generate millions of dollars for themselves and others.

FASTOW'S AND OTHERS' SELF-DEALING TRANSACTIONS

SPEs Involving "Friends of Enron"

12. According to Kopper and others, in early 1997 FASTOW devised a means to enrich himself and others while enabling Enron to maintain secret control over assets that it had

"sold" to supposedly independent SPEs. These transactions became known within Enron as "Friends of Enron" deals because the purportedly independent investors in the SPE actually were friends or family members of Enron executives, and served as nominees under the executives' control. According to Kopper, FASTOW told him that he and Enron's other top management liked "Friends of Enron" deals because they enabled Enron to retain control over assets while shedding the burdens of legal ownership, including required public disclosure in Enron's financial statements. Another benefit to FASTOW of the "Friends of Enron" structure was that he, Kopper, and others used their control over the investors to siphon off secretly for themselves proceeds of the SPE transactions, in violation of their duties to Enron and its shareholders.

<u>Alpine and RADR</u>

13. One "Friends of Enron" transaction disguised Enron's interest in certain wind farms in California, so that the wind farms could continue to receive beneficial regulatory treatment while they secretly remained under Enron's control. Under applicable federal and state regulations, the wind farms qualified for financial benefits conferred on alternative energy sources known as "qualifying facilities" ("QF"). Wind farms that were more than fifty percent owned by an electric utility holding company, however, were ineligible for QF status. In early 1997, FASTOW knew that Enron's wind farms would soon lose their QF status because Enron was in the process of acquiring Portland General Electric, and would become an electric utility holding company.

14. According to KOPPER, CS-9, CS-10, and documents obtained during the course of the investigation, in approximately March 1997 FASTOW devised a scheme whereby Enron could "sell" a portion of its interest in the wind farms to a partnership comprised of "Friends of

Enron." According to documents that I have reviewed, FASTOW initially proposed the formation of a partnership SPE to be known as Alpine Investors ("Alpine"), which would buy Enron's interest in the wind farms. The proposed investors in Alpine were all "Friends of Enron," including relatives of FASTOW's wife, CS-9, and CS-10. Alpine did not complete the proposed transaction with Enron. Rather, according to Kopper and others, in May 1997, FASTOW and Kopper created two SPEs known as "RADR ZWS LLC" and "RADR ZWS MM, LLC" (collectively, "RADR"), which purchased a portion of Enron's interest in the wind farms. Because FASTOW knew that his participation as an equity investor in RADR would require Enron to make public disclosure, he and Kopper enlisted "Friends of Enron" to serve as the supposedly independent third party investors. Those "investors" included CS-9, CS-10, and CS-11.

15. CS-9 and CS-11 have admitted in FBI interviews that they were Kopper's nominees and lacked sufficient funds to invest in RADR. Indeed, bank and other documents reflect that their investments were funded by FASTOW, in the form of a $419,000 loan to Kopper, who in turn lent it to CS-9 and CS-11.[2] CS-9, who never worked for Enron, received an additional $62,820 wire transfer from Enron, which CS-9 used as part of his RADR investment. According to Kopper, CS-9 and CS-11, it was understood from the outset that the loan to them would be repaid from RADR proceeds, and that Kopper would control any other RADR funds they received. Kopper in turn would use RADR funds to repay FASTOW. RADR purchased the necessary percentage of Enron's interest in the wind farms for $17 million. Transaction records

[2] Bank records show that FASTOW's loan to Kopper originated from a joint account he shared with his wife.

reflect that Enron funded 97% of the purchase with a $16.49 million loan to RADR. The "Friends of Enron" contributed a total of $510,000, broken down as follows: CS-11 provided $224,400 to become a 44 percent limited partner in RADR; CS-9 provided $234,600 to become a 46 percent limited partner; and CS-10 provided $51,000 to become a 10 percent owner and RADR's general partner.

16. Because the RADR investors were under the control of FASTOW and Kopper, and the supposed investments by CS-9 and CS-11 were funded by a loan from FASTOW, RADR failed to qualify for off-balance sheet treatment and should have been consolidated onto Enron's books. Also, according to Kopper, CS-9, CS-10, and CS-11, RADR was supposed to exist for only a few months. Instead, Enron extended the life of the RADR SPE for nearly three years, enabling the wind farms unlawfully to reap the financial benefits of QF status during that time.

17. On July 1, 1997, RADR began making distributions to CS-9, CS-10, and CS-11. Bank records show that on or about August 25, 1997, CS-9 and CS-11 repaid their loans by wiring Kopper $255,500, including $51,500 in interest, and $242,568, including $17,968 in interest, respectively. The next day, Kopper wired $481,850 to FASTOW, which included the original loan amount from FASTOW plus $62,850 in interest.

18. According to Kopper, CS-9, and CS-11, RADR proved to be far more lucrative than initially expected, generating a windfall to the "investors." According to Kopper and corroborated by bank records, FASTOW, who was aware of the windfall, obtained a share in the form of kickbacks from Kopper, CS-9, and CS-11. To disguise the nature of the payments, FASTOW instructed Kopper to establish a "gifting program," whereby Kopper and CS-9 made annual "gifts" of $10,000 to individual FASTOW family members. The $10,000 amount was

chosen because IRS rules exclude from taxable income and do not require reporting of gifts of $10,000 or less made to any one person in one year. FASTOW instructed Kopper that he and CS-9 should write checks not only to FASTOW but also to FASTOW's wife and two children. FASTOW cautioned that no "gifts" should come directly to him from CS-11 or RADR, as FASTOW wanted to conceal his link to the RADR deal and could think of no legitimate explanation why he would receive checks directly from CS-11. FASTOW told Kopper that, if ever asked, they could explain the checks from Kopper by saying that he and FASTOW were close friends and the checks were gifts. In all, records reflect that Kopper arranged "gift" payments totaling approximately $125,000 to FASTOW and his family between December 1997 and February 2000.[3]

19. By establishing RADR in a way that clearly violated SPE accounting rules, FASTOW enabled Enron improperly to keep its RADR investment off its books, in violation of the securities laws. In addition, by using RADR to hide Enron's continued control over the wind farms from federal and state regulators, FASTOW enabled the wind farms wrongly to continue receiving the financial benefits of QF status. Finally, by using RADR to enrich himself and others, FASTOW unlawfully deprived Enron and its shareholders to their right to FASTOW's honest services.

<u>SPEs Controlled Directly by Enron Executives</u>

20. By late 1997, Enron began creating SPEs that were under the direct control of

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[3] As part of his plea and a simultaneous SEC settlement, Kopper agreed to forfeit RADR funds under his control. CS-9 and CS-11 also have agreed not to contest forfeiture of their RADR proceeds.

Enron executives. The first such SPE was Chewco Investments, L.P. ("Chewco").

Formation of Chewco

21. In 1993, Enron and the California Public Employees Retirement System ("CALPERS") entered into a joint venture investment partnership known as Joint Energy Development Investments ("JEDI"). According to JEDI documents, JEDI's strategy was to make natural gas-related investments in the United States and Canada. Enron was JEDI's general partner and contributed $250 million in Enron stock; CALPERS was JEDI's limited partner and invested $250 million in cash. Given CALPERS' large equity investment and other factors, Enron was able to treat JEDI for accounting purposes as an equity investment in an unconsolidated affiliate (i.e., an off-balance-sheet investment vehicle).

22. In approximately the summer of 1997, Enron sought to have CALPERS invest in an even larger new partnership to be called JEDI II. At the same time, CALPERS decided to liquidate its investment in JEDI, and Enron began to seek a third party that would buy CALPERS' interest for $383 million. CALPERS agreed to the $383 million price if its interest was sold by November 6, 1997.

23. According to Kopper and others, FASTOW proposed that Chewco be created to buy CALPERS' interest in JEDI. Initially, FASTOW planned to serve as Chewco's outside equity investor and general partner. When he was advised that his direct involvement would require disclosure in Enron's financial statements, FASTOW proposed that Kopper assume that role. FASTOW explained to Kopper that his involvement would not trigger disclosure by Enron, as Kopper was not considered an executive officer of Enron for financial reporting purposes.

24. According to Kopper and others, Enron was unable to meet the November 6,

1997, deadline imposed by CALPERS. Indeed, Chewco had no equity, much less the $383 million required to buy CALPERS' interest in JEDI. To meet CALPERS' deadline, FASTOW, Kopper, and others at Enron arranged to fund Chewco temporarily through $383 million in bridge loans from Barclays Bank PLC ("Barclays") and Chase Manhattan Bank ("Chase"). Repayment of the loans was guaranteed by Enron.[4]

25. According to public admissions by Enron and Andersen in the fall of 2001, Chewco's structure at the end of 1997 again violated SPE requirements. Its purported outside "equity" investment consisted of $11.49 million from Barclays. However, Enron structured the transaction so that more than $11 million of that supposed equity investment actually was a loan from Barclays to entities controlled by Kopper. Moreover, that loan was partially secured by Enron's interest in assets recently sold by JEDI, so that Barclays was not fully at risk. The only other "equity" investment consisted of $125,138 provided by entities under the control of Kopper, SONR#1 LP and SONR#1 LLC (collectively, "SONR"). Of that "investment," $100,100 represented proceeds of the RADR scheme. Thus, as Enron and Andersen admitted in the fall of 2001, Chewco failed for several reasons to qualify as an SPE that could receive off-balance-sheet treatment.[5]

<u>Kickbacks of Chewco Proceeds from Kopper to FASTOW</u>

26. As noted, FASTOW chose Kopper to serve as Chewco's managing partner only

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[4] According to Kopper and others, this transaction was referred to as a "dirty close," because participants knew that the Chewco structure failed to comply with SPE rules, as Chewco had made no true equity investment and Enron had guaranteed the banks against risk of loss on the loans. Enron thus planned for financial reporting purposes to replace the structure before year end with one that would qualify Chewco as an off-balance-sheet SPE.

[5] In November 2001, in part because Chewco and JEDI should have been consolidated from the outset into Enron's financial statements, Enron announced that it would restate its financial results from 1997 through 2001 by hundreds of millions of dollars.

because FASTOW himself was told he could not do so without triggering disclosure on Enron's books. FASTOW's inability to serve in a formal role at Chewco, however, posed no impediment to his greed: he demanded a share of Chewco's profits, in violation of his duty to provide honest services to Enron and its shareholders.

27. According to Kopper, at the closing of the Chewco transaction in December 1997, he chose $500,000 as an amount for his annual fee as Chewco's manager. Bank records confirm that SONR, the entity controlled by Kopper, thereafter received quarterly wire transfers in the amount of $125,000 each, for a total of $1.5 million. At FASTOW's direction, Kopper transferred $54,000 of his management fees to FASTOW's wife. Bank records reflect that between April 30, 1998 and August 3, 1999, FASTOW's wife received six checks from SONR which totaled $54,000.

28. FASTOW and his family members also received kickbacks from other money that Kopper obtained in connection with Chewco. For example, in December 1998, Kopper asked that Enron pay a $400,000 fee to Chewco to obtain its consent to an amendment of the JEDI partnership agreement. According to Kopper , although the amendment benefitted Chewco rather than Enron, FASTOW nevertheless authorized Enron to pay the fee, which was referred to within Enron as a "nuisance/arrangement fee."[6] According to Kopper, at FASTOW's direction, he subsequently transferred $67,224 of the "nuisance/arrangement fee" to FASTOW and members of FASTOW's family. A review of bank records revealed the following transfers by Kopper:

[6] The $400,000 was received by SONR on December 23, 1998, and $241,600 thereafter was transferred to Kopper's account at Bank One.

Date	Amount	Type	Account From/To	Purpose
12/31/1998	$10,000.00	Check #1182	Bank One Chase	Kopper to FASTOW's son
12/31/1998	$10,000.00	Check #1183	Bank One Chase	Kopper to FASTOW's son
12/31/1998	$19,724.00	Check #1181	Bank One Chase	Kopper to FASTOW's wife
01/05/1999	$27,500.00	Check #1180	Bank One Chase	Kopper to FASTOW
Total	**$67,224.00**			

FASTOW Approves "Tax Indemnity Payment" from Enron to Chewco

29. On March 26, 2001, Enron repurchased Chewco's limited partnership interest in JEDI for $35 million. As a result of the buyout, Kopper and CS-9 received approximately $3 million in cash at closing. Kopper requested an additional payment from Enron to Chewco of $2.625 million under a purported tax indemnity agreement executed in 1997. Although both inside and outside counsel at Enron advised FASTOW that the payment was not contractually required and should not be made, FASTOW approved the payment to Chewco. Kopper subsequently transferred the $2.625 million to himself.

The LJM Entities

Overview

30. By 1999, Enron was increasingly dependent on transactions with SPEs to meet its financial reporting goals. By June 1999, in order to have an off-balance-sheet SPE to which Enron could readily turn, Enron's Board of Directors (the "Board") agreed to permit FASTOW to

create and serve as the managing partner of a new SPE named LJM1.[7] The Board later approved FASTOW's participation in another even larger SPE, LJM2 (the LJM entities hereafter collectively will be referred to as "LJM" unless otherwise noted). LJM's business activity principally involved transactions with Enron and Enron affiliates.

31. From approximately July 1999 through October 2001, Enron entered into transactions with LJM that defrauded Enron, its shareholders, the SEC, and others. The transactions with LJM enabled Enron to: (1) manipulate its balance sheet by moving poorly performing assets off balance sheet, when in fact such off-balance-sheet treatment was illegal; (2) manufacture earnings through sham transactions with LJM when Enron was having trouble otherwise meeting its goals for a quarter; and (3) improperly inflate the value of Enron's investments by backdating transaction documents to dates advantageous to Enron.

32. From FASTOW's perspective, Enron's dealings with LJM ensured that: (1) as CFO, FASTOW readily could rid Enron of poorly performing assets and thereby improve Enron's reported financial results, which in turn would enable FASTOW to earn continued prestige, salary, bonuses, and other benefits from Enron; (2) LJM would make money on all its dealings with Enron, since Enron management illegally and secretly guaranteed that LJM would not lose money and, if it did, would be made whole in future transactions; and (3) FASTOW and others at LJM personally reaped huge sums of money from such transactions, both in the form of management fees and skimmed deal profits.

<u>False Representations to Enron's Board</u>

33. According to interviews of Board members, and review of Board minutes and

[7] LJM stands for the first initials of the names of FASTOW's wife and sons.

Board members' contemporaneous notes, in approving FASTOW's role at LJM the Board relied on false representations by FASTOW, Enron's Chief Executive Officer ("CEO"), Chief Accounting Officer ("CAO"), Treasurer, and others. Specifically, the Board understood that: (1) Enron's CAO and Chief Risk Officer would review transactions with LJM to ensure their fairness to Enron; (2) the Board would be informed of all Enron transactions with LJM; (3) the purpose of LJM was to buy assets from Enron; (4) Board approval would be required for any Enron employee to work at LJM; and (5) although FASTOW would be compensated by LJM, he would not be permitted to profit from any appreciation in the value of Enron stock held by LJM or its affiliates.

34. According to Kopper and CS-1, far from reviewing transactions with LJM to ensure their fairness to Enron, Enron's CAO had an undisclosed agreement with FASTOW, which was referred to at LJM and Enron as the "Global Galactic" agreement. Under this agreement, LJM would not lose money in its dealings with Enron. Any Enron-LJM transaction that resulted in a loss to LJM would be made up later.

35. Further, according to interviews of several Board members, the Board was led to believe by FASTOW, Enron's CEO, and others that LJM was a vehicle for Enron to sell assets, and did not contemplate that Enron would buy back assets from LJM. Board members described such buy-back transactions as antithetical to the business purpose for LJM that was presented to the Board at the time it approved FASTOW's involvement in LJM. Failing to inform the Board of such transactions hid the Enron-LJM fraudulent buy back activity.

36. Nor was the Board informed that FASTOW had arranged to have Kopper, while still Enron's Managing Director of Global Finance, serve as a managing director at LJM, or that FASTOW had staffed LJM with several other Enron employees. In late 2001, Board members

confronted FASTOW and asked whether any current or former Enron employees other than FASTOW and Kopper had received remuneration from LJM. According to interviews of Board members and a review of contemporaneous notes, FASTOW responded by saying "no." In fact, as FASTOW knew at the time, among other things, he personally had authorized several million dollars in LJM-derived payments to various Enron employees.

37. Finally, as described more fully below in connection with the a transaction known as Southampton, FASTOW also violated his own representation to the Board that he would not personally profit from any appreciation in the value of Enron shares held by LJM.

Use of the LJM Partnerships to Manipulate Enron’s Financial Results

“Parking” Enron Assets with LJM

38. According to Kopper and CS-1, various transactions between Enron and LJM were mere “warehousing” deals in which there was an understanding that LJM would hold Enron assets only for a short time, with Enron agreeing that LJM would make a profit on those assets. FASTOW and others caused LJM to “purchase” under-performing assets from Enron for prices that often bore no relation to the assets’ true value. These assets were referred to as Enron’s “nuclear waste.” In undocumented side deals, Enron agreed that LJM would not lose money even if the market value of an asset declined, because Enron would attempt to arrange a sale of the asset to a third party at a profit to LJM or, if no such third party could be found, Enron itself would repurchase the asset. According to Kopper and CS-1, LJM would not have "purchased" Enron's impaired assets but for the secret buy-back guarantee from Enron.

The Cuiaba Transaction

The Cuiaba Project Problem

39. Enron, through a wholly-owned subsidiary, held approximately 65% of the equity in a company that was building a power plant in Cuiaba, Brazil (the "Cuiaba project"). The Cuiaba project was troubled from its inception.[8] According to CS-6, an Enron employee who worked on the project, the Cuiaba project caused Enron to incur significant unexpected costs. By 2000, the Cuiaba project was approximately $120 million over budget. According to LJM documents, Enron sought to avoid consolidation of the project's debt on its balance sheet by selling its interest in the project. However, according to CS-7, the Cuiaba project was so problematic that no buyer would be interested in purchasing the project from Enron because there were too many serious risks and impediments to its being profitable in the time projected in the financial models.

FASTOW's Solution to the Cuiaba Problem

40. Enron employees and FASTOW solved the Cuiaba project problem by "selling" the project to LJM. Documents reflect that on September 30, 1999, Enron "sold" LJM a 13-percent interest in the project for $11.3 million. As a result of its supposed decreased ownership, Enron did not have to consolidate the project on its balance sheet. Furthermore, this purported sale enabled Enron to recognize a total of approximately $65 million of income in the third and fourth quarter of 1999, when it was struggling to meet its projected financial results.

41. LJM agreed to "buy" Enron's interest in the Cuiaba project despite its problems only because Enron agreed in an undisclosed side deal to buy back the interest if necessary so that LJM would not lose money. According to CS-1, there was an unwritten buyback agreement

[8] Enron's problems with Cuiaba were well known at Enron. Indeed, in December 2000, Enron's CEO made a presentation to the Board detailing significant cost overruns and other troubled aspects of the Cuiaba project.

between FASTOW and Enron whereby if Enron could not find another purchaser for LJM's Cuiaba interest, Enron would buy back LJM's interest and guarantee LJM a profit. CS-1 stated that the original deal documents for Cuiaba made reference to such an agreement between LJM and Enron. Those documents were revised to remove such language out of concern that Andersen would not approve the transaction as a sale with such a provision in the transaction. Kopper also stated that reference to the buyback agreement between LJM and Enron was deleted because it would prohibit Enron from recognizing the sale to LJM and, therefore, Enron would have to consolidate Cuiaba. The parties circumvented these rules by orally agreeing to the buyback and entering into a written agreement that omitted the buyback language that would have alerted third parties to the scheme.

Enron Buys Back the Cuiaba Project

42. After the LJM "purchase," the Cuiaba project continued to encounter serious problems. According to an E-mail from an LJM employee to FASTOW dated October 16, 2000: the Cuiaba plant was experiencing “operational problems,” did not have long term gas supply arrangements, and “[c]onditions precedent for the permanent financing have not been satisfied, which is impairing returns. . . [t]he project has experienced cost overruns due to the delayed start and change orders of $148.4 MM on an original budget of $519 MM, which is impairing returns.” Kopper, for instance, discovered that the rotors in the Cuiaba plant were cracking and that there were construction delays because the Brazilian government would not grant a permit for a pipeline to traverse a protected rainforest.

43. Despite these problems, despite the fact that LJM was represented to the Board to be a means to buy assets from Enron rather than the other way around, and despite the existence

of more promising assets for repurchase by Enron, in August 2001, Enron bought back LJM's Cuiaba interest for $13,752,000. This purchase price was pre-arranged so that Enron provided LJM with a significant profit even though the true market value for Cuiaba had decreased. Kopper stated that to effect the buyback, in August 2001 he simply had Enron informed that it repurchase LJM's interest in Cuiaba.[9]

The Nigerian Barge Transaction: Enron Manufactures Earnings and Cash Flow

44. Another example of asset parking involved Enron's interest in electricity-generating power barges moored off the coast of Nigeria, which were to supply electricity pursuant to an agreement with the Nigerian government. According to several witnesses, in 1999, Enron made unsuccessful efforts to sell an interest in the barges. When Enron failed to sell the project by December 1999, Enron through FASTOW and its then Treasurer contacted, among other entities, the Financial Institution to pressure it to buy a $28 million interest in the project, with 75% of its purchase to be financed by Enron, so that Enron could book the sale by year end. Such a sale would allow Enron to record $12 million of earnings, and $28 million in funds flow, in the fourth quarter of 1999, which according to CS-3 was needed to meet Enron's earnings goals.

45. In spite of some internal dissension, including a document expressing concern that it would be viewed as "aiding and abetting" Enron's fraudulent manipulation of its income statement, the Financial Institution ultimately agreed that it would "invest" $7 million in the project. Enron financed the remainder of the deal with a loan that was interest-free to the

[9] As FASTOW and Kopper planned, the proceeds of the repurchase of the Cuiaba project were used by Kopper to enable him to purchase FASTOW's partnership interest in LJM.

Financial Institution, and paid all other expenses on the deal.

46. Based on my investigation, I believe that Enron, through FASTOW, agreed with the Financial Institution that it would have a set rate of return and would be taken out of the deal within six months. Witness interviews and documents from the Financial Institution, Enron, and LJM, evidence that FASTOW gave the Financial Institution an express, but deliberately unwritten, commitment that Enron would arrange for a buyer to purchase the Financial Institution's interest within six months for a fixed rate of return.[10] According to the Financial Institution's own internal documents, it had a strong incentive to accommodate Enron because, "Enron has paid [the Financial Institution] approximately $40 million in fees in 1999 and is expected to do so again in 2000," and it hoped to generate more Enron business. According to Kopper and others, FASTOW was also close personal friends with the Financial Institution's supervisory Enron relationship partner, who championed the deal within the Financial Institution.

47. Indeed, according to Kopper, FASTOW told him that he had an undisclosed oral agreement with the Financial Institution whereby Enron promised to take the Financial Institution out of the deal within six months. FASTOW told Kopper that this agreement could not be put in writing because if the oral promise was memorialized Enron would not be able to recognize needed earnings on its fourth quarter 1999 financial statements. FASTOW also told Kopper that this transaction involved putting a lot of pressure on the Financial Institution, which FASTOW referred to as "bear-hugging." Kopper said that FASTOW informed him that Enron's then Treasurer had asked FASTOW to contact the Financial Institution at the end of 1999 in order to

[10] Such side agreements would result in Enron not properly accounting for the transaction as a sale or recording a gain on the transaction.

pressure it to participate in the deal.

48. Kopper is corroborated by other witnesses and documents. According to CS-1, CS-2, and CS-3, Enron promised the Financial Institution that it would be taken out of the deal within six months. CS- 3 said that this was the first time he/she had been exposed to "manufactured earnings." According to CS-2, who participated in the transaction for Enron, the purpose of the barge transaction was to allow Enron to recognize the sale on its balance sheet. CS-5 also knew that FASTOW put considerable pressure on the Financial Institution to complete the deal, assured it that it would not lose money on the transaction, and promised that its interest would be bought out within six months. According to CS-8, a Financial Institution employee, the Financial Institution was not in the business of owning barges but wanted to accommodate Enron, an important client. CS-4, another Financial Institution employee, stated that it did no due diligence on the transaction, either before entering into the deal or afterward to monitor the supposed investment.

49. Documents also confirm that the "sale" of the Nigerian barges to the Financial Institution was a sham transaction. For example:

- Financial Institution documents reflect that its Chairman of Investment Banking scheduled a conference call with senior management of Enron to confirm Enron's "commitment to guaranty the [Financial Institution] takeout within six month," and that the deal needed to close by December 31, 1999.
- According to an internal LJM document, Enron sold the barges to the Financial Institution, "promising" that the firm would be "taken out by sale" by June 2000.
- A December 23, 1999, draft engagement letter between Enron and the Financial

Institution stated that the transaction would have a yield of approximately 15% and that the Financial Institution's interest would be sold to a third party or purchased by Enron.

- An e-mail dated May 11, 2000 from an Enron employee[11] confirms that, "ENE is obligated to get [the Financial Institution] out of the deal on or before June 30...."
- Internal Financial Institution documents described the transaction as a "'relationship' loan" and reflected periodic "interest" calculations on the investment at a rate of 15%.
- With the end of June 2000, approaching without a buyer having been located by Enron, the Financial Institution drafted a letter to Enron dated June 14, 2000, which reiterated that Enron "agreed" to sell the Financial Institution's interest in the deal by June 30, 2000 and demanded payment from Enron of $7,510,976.65 [a figure that was the agreed-upon rate of return]. The letter was never sent because Enron arranged to park the barges with LJM.

Enron Re-Parks the Financial Institution's Interest with LJM

50. With no true third-party purchaser available to buy the Financial Institution's interest, on June 29, 2000 – the day before Enron had promised to "take out" the Financial Institution – FASTOW arranged for LJM to purchase the Financial Institution's interest. Kopper stated that in May 2000 FASTOW instructed him to have LJM prepare to purchase the Financial Institution's interest, and that FASTOW agreed that Enron in turn would "take out" LJM by locating a third party buyer who would buy LJM's interest at a profit to LJM. CS-1 said he/she was told by a person who worked on the transaction that LJM purchased the Financial

[11] This employee later was promoted to Treasurer of Enron.

Institution’s interest to fulfill Enron’s commitment to the Financial Institution and because if Enron itself repurchased the interest it would have been required to reverse the earlier “sale” on its books.

51. Documents confirm that Enron used LJM to fulfill its commitment to the Financial Institution while keeping the barge interest off Enron’s own balance sheet. LJM paid $7,525,000 for the Financial Institution’s interest, which represented a $525,000 premium over the Financial Institution’s original investment to account for the rate of return promised by Enron. Further, LJM and the Financial Institution did not perform internal valuations of the deal or negotiate over price. Enron also provided financing to LJM for a transaction that purported to be between two third parties and Enron paid LJM a substantial fee for entering into the deal with the Financial Institution. According to an Enron employee's "2000 Deals and Accomplishment"[12] assessment, the employee claimed that he/she successfully closed a $28 million sale by the Financial Institution:

> "[The Financial Institution's] stated intention (with ENE's commitment) to sell the equity position by 6/30/00 but [Enron] business unit not in a position to market [Financial Institution] equity to third party investor by deadline. Negotiated and executed the sale of the [Financial Institution's] equity to LJM, fulfilling obligation to [the Financial Institution]."

<u>The Raptor I Fraud Scheme</u>

52. Investigation has revealed that beginning in the spring of 2000, Enron and LJM

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[12]These documents, which were prepared annually by many Enron employees to support their requests for increased salary and bonuses, were referred to within Enron as "brag sheets."

engaged in a series of complex financial transactions with an SPE called Raptor I. FASTOW, Enron's CAO, and others used Raptor I to manipulate artificially Enron's balance sheet and to manufacture profits for LJM and FASTOW at Enron's expense. Specifically, they conspired to engage in illegal transactions involving the Raptor, namely: (1) the use of Raptor as an off balance sheet vehicle that they knew in fact did not qualify for such treatment and should have been included on Enron's books; (2) the backdating of documents to generate profits for Enron; and (3) the manufacturing of guaranteed earnings for LJM.

The Enron Balance Sheet Problem

53. Enron invested in other companies, including start-up ventures that later did initial public offerings ("IPO") of their shares. At the time of an IPO, Enron often owned substantial shares of the company. Following the IPO, Enron was at risk for market price fluctuations in the shares. The value of such stock was required to be recorded in Enron's financial statements at the end of each quarter. Because Enron was restricted by "lock up" agreements from selling its shares until some future date, it sought to reduce the impact on its financial results of a possible dramatic decline in the share price.

The Raptor I Solution

54. Enron's own documents reflect that Raptor I was designed to protect Enron's balance sheet from decreases in value of certain of these investments. Enron sought to use Raptor I to lock in the value of Enron's investments in stock, without actually selling its shares. Raptor I was created in April of 2000 through an off-balance-sheet SPE called Talon LLC ("Talon"). Talon would enter into "hedging" transactions with an Enron subsidiary that would lock in the

value of Enron's stock portfolio: if the price of Enron's stock increased, Talon would reap the upside gain, and if the stock declined, Talon would pay the Enron subsidiary the amount of the loss. The parties to such transactions are thus predicting the future value of a stock.

55. Talon was funded mainly by Enron through a promissory note and Enron's own stock. The remainder of Talon's funding came from $30 million from LJM. This alleged third party funding served as the necessary three percent outside equity required for Talon not to be reflected on Enron’s balance sheet.

FASTOW’s Side Deal

56. Talon, however, was not properly off balance sheet. In an undisclosed side deal with FASTOW, LJM was to receive its initial investment plus a substantial profit from Enron, all prior to Talon being allowed to engage in the hedging transactions for which it was created. Such a side deal, if disclosed, would have “broken” the SPE, that is, it would have required Talon to be consolidated on Enron’s financial statements because the outside three percent equity was not at risk. Indeed, with the return of LJM's capital by Talon, there was no outside equity at risk. Yet, Enron’s filed financial statements did not consolidate Talon. In exchange for this side agreement, FASTOW allowed Enron employees to use Talon to manipulate Enron's balance sheet.

57. According to Kopper and CS-1, there was an unwritten side-deal between Enron and FASTOW that stock hedges would not be entered into by Talon until LJM received $41 million, constituting a $30 million return of its investment and an $11 million profit.

58. In fact, records reflect that on September 7, 2000, LJM received $41 million from Talon. And, in an April 2001 report to LJM investors, FASTOW stated that the return of LJM's investment resulted in an absence of risk to LJM in the Raptor transactions:

> After the settlement of the puts, Enron and the Raptor vehicles began entering into derivative transactions designed to hedge the volatility of a number of equity investments held by Enron. <u>LJM2's return on these investments was not at risk to the performance of the derivatives in the vehicles given that LJM2 had already received its return of and on capital</u>. (Emphasis added).

In an E-mail by a senior LJM employee to one of LJM's limited partners in August 31, 2000, the LJM employee stated that:

> The original Raptor is being settled early by Enron so that they [sic] can begin writing derivatives against the structure. LJM2 will receive its return <u>on capital of $11 million and return of capital of $30 million this week.</u> (Emphasis added).

<u>Disguising Enron’s $41 Million Payment To LJM</u>

59. In order to mask the side deal, FASTOW, Enron’s CAO and others devised a scheme to manufacture a $41 million payment to LJM. To do so, Enron and Talon entered into a “put,” that is, a transaction that ostensibly served to hedge Enron against a decline in its own stock value. That "put" option was purchased by Enron for $41 million. The $41 million was paid to Talon and then transferred to LJM. Both Kopper and CS-1 said that the true purpose for the put option was to generate income to satisfy Enron’s obligation to LJM under the undisclosed side agreement entered into by FASTOW.

<u>Back-Dating Documents In Order to Manipulate Enron’s Financial Statements</u>

60. After satisfying the conditions of the side deal, Enron began to use the Raptor to hedge Enron’s investments. Enron documents that I have reviewed note August 3, 2000, as the purported date of the Raptor hedges. At the close of business on that day, the price of the

principal stock that Enron sought to hedge, approximately 1.09 million shares of AVICI, was at an all time high of $163.50. By entering into a hedge on that date Enron would have been able to lock in a substantial gain in the stock and avoid the risk of the stock declining. In fact, records reflect that within a month, AVICI stock had significantly declined.

61. Witnesses and documents evidence that FASTOW and Enron backdated the AVICI hedge to August 3, 2000, in order to take advantage of its price on that day. Such backdating served to manipulate Enron's financial statements. CS-1 explained that the reason for back-dating the AVICI transaction to August 3, 2000, was that FASTOW and others knew that was the date on which the stock of AVICI traded at its all time highest closing price of $163.50. By back-dating the agreement to August 3, 2000, Enron was able to lock in the value of AVICI at a significant profit and not incur the subsequent loss from the stock declining.

62. CS-1 and Kopper explained that there would not be a reason for a true third-party to engage in such a transaction, which was to Talon's detriment since the supposed future risks in the hedge were already known at the time the deal was in fact consummated, i.e., the price of AVICI stock already had fallen. Because the transaction made no economic sense from Talon's perspective if it were a legitimate transaction, when CS-1 learned of it, CS-1 questioned FASTOW about it. FASTOW told CS-1 that since LJM had already received its money and its profit from Enron, namely the $41 million discussed above, LJM was to "accommodate" Enron. FASTOW told CS-1 to have a hands-off approach with Enron in relation to future stock hedges entered into by Talon. According to CS-1, people at LJM and Enron were aware of the back-dating and referred to it as the "Enron time machine."

63. Documents I have reviewed corroborate the above, including the following:

- According to LJM documents, the $41 million was not transferred to LJM until September 7, 2000, rather than on or about August 3, 2000, when the put was allegedly settled.
- An internal LJM document, describing an Enron-LJM deal, listed as a benefit to Enron of engaging in the transaction as follows:

  LJM has been accommodating and has back-dated documents as necessary. (Emphasis added).
- An internal LJM document, describing another Enron-LJM deal involving AVICI, listed as a benefit to Enron of engaging in the transaction as follows:

  [LJM] Provided equity when other traditional equity providers would not.

FASTOW's Use of LJM to Enrich Himself and Others

64. As discussed above, Enron invested in other companies. Records reflect that one such investment was in Rhythms NetConnections, Inc. ("Rhythms Net"), an internet company. In approximately April 1999, Rhythms Net conducted an IPO of its shares. At the time of the IPO, records reflect that Enron owned approximately 5.4 million Rhythms Net shares. Following the IPO, Enron was at risk for market price fluctuations in Rhythms Net shares. Because Enron was restricted from selling its shares until November 1999, it sought to reduce the impact on its financial results of a possible dramatic decline in the share price of Rhythms Net stock.

65. According to numerous witnesses and corroborated by records, in approximately June 1999 Enron devised a means to reduce the risk of its investment in Rhythms Net through a "hedge." Records reflect that, as part of this hedging effort, an LJM entity created a subsidiary

known as LJM Swap Sub, L.P ("Swap Sub"), which was funded with cash and Enron shares.[13] According to transaction documents and witnesses, Swap Sub thereafter entered into a series of transactions with Enron known as "derivatives." These derivatives transactions included a "put," which gave Enron the right to sell its Rhythms Net shares to Swap Sub for a set price on certain future dates even if the market value of the Rhythms Net shares was below the set price.

66. According to public records, Enron shares held by Swap Sub increased by 58% in January. Meanwhile, Swap Sub's only liability, the Rhythms Net put option, decreased because Rhythms Net shares climbed from $27.50 at the end of 1999 to reach high of $47.50 on February 17, 2000.[14]

67. FASTOW was prohibited by the Enron Board from having any direct pecuniary interest in Enron's stock held by LJM. Indeed, in his own presentation made to Enron's Board on June 28, 1999, FASTOW emphasized that he would not receive any current or future appreciated value of Enron's stock. Nevertheless, according to Kopper and various e-mail and other documents that I have reviewed, FASTOW decided that he, Kopper and three bankers employed by NatWest would defraud Enron and NatWest by capturing the increase in Swap Sub's value for themselves and others.

<u>Southampton</u>

68. Through the Southampton transaction, FASTOW and others defrauded both Enron and NatWest. The scheme also enabled FASTOW personally to profit at the expense of Enron

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[13] This LJM entity had two limited partners, Cayman Islands investment entities owned by NatWest, and Credit Suisse First Boston ("CSFB"). Each also invested in Swap Sub.

[14] As the price of the underlying shares being covered by a put option increases, the value of the put option decreases.

and NatWest.

69. According to publicly available documents and numerous witnesses interviewed by the FBI, in the fall of 1999, the Bank of Scotland launched a hostile takeover bid for NatWest. Shortly thereafter, Royal Bank of Scotland launched a competing hostile bid for NatWest, which ultimately succeeded.

70. NatWest E-mails reflect that by at least early 2000, three NatWest bankers working on matters relating to Enron and LJM, Gary Mulgrew, Giles Darby, and David Bermingham believed that the NatWest division where they worked was likely to be sold, affecting the security of their employment. E-mails reflect that around the same time, the bankers also became aware that while NatWest internally valued its Swap Sub interest at zero, it actually had significant value.

71. According to Kopper, as well as documents and travel records reviewed by the FBI, on February 22, 2000, the NatWest bankers traveled to Houston, Texas, to meet with FASTOW and others. During that meeting the bankers, purportedly representing NatWest, made a slide show presentation outlining their ideas for the restructuring of Swap Sub.

72. Thereafter, according to Kopper and relevant documents, FASTOW, Kopper and the bankers agreed on a way to carry out the scheme. Kopper prepared a letter in which he proposed that a company under his control purchase NatWest's interest in Swap Sub for $1 million. Mulgrew and Darby, in violation of their duties to NatWest, recommended that it accept the $1 million offer. Subsequently, in violation of his duty to NatWest, Bermingham recommended to the Board of Directors of NatWest's Cayman Islands investment entity that it accept the offer.

73. According to Kopper and corroborated by documents, Kopper created several layers of partnerships that would buy Swap Sub in order to conceal from Enron and NatWest the true structure of the Swap Sub transaction and the roles played by FASTOW, Kopper, and the bankers. The partnership created to buy NatWest's interest in Swap Sub was Southampton, L.P., in which FASTOW, Kopper, and certain other Enron and LJM employees had a financial interest. Southampton K Co. was a limited partner in and owned 50% of Southampton, L.P. Thus, after Southampton, L.P., purchased NatWest's interest in Swap Sub, Southampton K Co. would own 50% of that interest.

74. Kopper provided the bankers with an option to buy Southampton K Co. for $250,000. Upon exercising that option, the bankers would own 50% of NatWest's interest in Swap Sub, an ownership interest that FASTOW and Kopper knew Enron was prepared to purchase for millions of dollars.

75. According to Kopper and other witnesses, and corroborated by records, on or about March 22, 2000, FASTOW finalized an agreement with Enron to pay Swap Sub $30 million, which would enable Enron to sell its Rhythms Net shares and recover the Enron shares used to fund Swap Sub. FASTOW reported to Kopper that, to obtain Enron's agreement, he represented to Enron that CSFB would receive $10 million, and falsely represented that NatWest would receive $20 million.

76. As Kopper acknowledged in his plea, and corroborated by bank and other records, the British bankers received approximately $7.3 million from this scheme. The remaining balance of the funds went to investors in the Kopper-created entity Southampton Place. These investors included: Kopper, who contributed $25,000 of his own money and directed Chewco to loan

$680,000; the FASTOW Family Foundation, a purported charitable foundation created by FASTOW for the purpose of receiving Southampton proceeds, which contributed $25,000; and five Enron and LJM employees, chosen by FASTOW and Kopper, who contributed a total of less than $20,000.

77. On approximately May 1, 2000, the investors in Southampton Place received the following payout: the FASTOW Family Foundation $4.5 million; Kopper $4.5 million; and the five Enron and LJM employees received a total of approximately $3.3 million.[15]

Sale of the LJM Entities

78. According to Kopper and other sources, in June 2001 Enron became concerned, in part because of criticism in the press, about FASTOW's continued role in the LJM entities. In July 2001, at the urging of FASTOW and Enron's CAO, Kopper purchased FASTOW's interest in LJM for more than $[16 million].[16] The CAO explained that while FASTOW's continued involvement in LJM would require disclosure on Enron's financial statements, Kopper's would not. The CAO assured Kopper that LJM would be lucrative to Kopper because Enron would conduct significant future business with LJM to help Enron achieve its quarterly financial reporting goals.[17] That Enron intended to continue its relationship with LJM also was reflected in

[15] Documents that I have reviewed include an internal CSFB memo dated March 20, 2000, memorializing a conversation between a CSFB attorney and Enron's CAO. According to the memo, the CAO represented that Enron's CEO were aware of and had approved the sale of equity interests in Swap Sub to entities that were affiliated with employees of Enron.

[16] To pay FASTOW, Kopper wire transferred $15.5 million to FASTOW's account at JP Morgan, and transferred to FASTOW a home worth approximately $800,000. As FASTOW, Kopper, and others planned, the proceeds of Enron's repurchase of the Cuiaba project were used to repay Kopper.

[17] During FASTOW's tenure as general partner at LJM, he personally received compensation and other distributions totaling more than $20 million.

a memorandum from Citigroup recommending that a loan to Kopper be approved because, among other things, “many [Enron] transactions will continue to flow through LJM.”

<u>CONCLUSION</u>

79. Based upon the foregoing, there is probable cause to believe that criminal conduct by FASTOW and unnamed co-conspirators has included the probable commission of the following violations:

(a) securities fraud, in that FASTOW knowingly and willfully used and employed manipulative and deceptive devices and contrivances, buy use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the SEC (Title 17, Code of Federal Regulations, Section 240.10b-5), in that FASTOW engaged in acts, practices, and courses of business which would operate as a fraud and deceit upon members of the investigating public in connection with the purchase or sale of securities, in violation of 15 U.S.C. §§ 78j (b) and 78ff;

(b) wire fraud, in violation of 18 U.S.C. §1343, namely to unlawfully devise a scheme or artifice to defraud and to obtain money or property by means of false or fraudulent pretenses, representations or promises, and to use and cause to be used interstate wire communications for the purpose of executing a scheme or artifice to defraud;

(c) mail fraud, in violation of 18 U.S.C. § 1341, namely to unlawfully devise a scheme or artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and to use and cause to be used the U.S. Mail for the purpose of executing said scheme or artifice to defraud;

(d) Laundering of proceeds generated by fraud in connection with the offer, purchase and sale of securities, in violation of 18 U.S.C. §§ 1956 (h), 1957;

(e) Conspiracy to commit, and aiding and abetting the commission of the foregoing offenses, in violation of 18 U.S.C. 371 and 2.

80. All in violation of 18 U.S.C. §§ 1341, 1343, 1344, 1956 (h), 1957, 371 and 2; 15 U.S.C. §§ 78j (b) and 78ff; and 17 C.F.R. § 240.10b-5.

NOTICE OF FORFEITURE

(18 U.S.C. Section 981, 982, 1956 and 28 U.S.C. Section 2461)

81. As a result of the fraud offenses alleged in the criminal complaint, herein alleged and incorporated by reference for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 981, and Title 28, United States Code, Section 2461, the defendant ANDREW FASTOW shall, upon conviction of each such offense alleged in the criminal complaint, forfeit to the United States all property, real and personal, which constitutes or is derived from proceeds traceable to the alleged fraud offenses, wherever located, and in whatever name held.

82. As a result of the money laundering offenses alleged in the criminal complaint, herein alleged and incorporated by reference for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 18, United States Code, Section 982, the defendant ANDREW FASTOW shall, upon conviction of each such offense alleged in the criminal complaint, forfeit to the United States all property, real and personal, involved in such offenses, and all property traceable to such property, wherever located, and in whatever name held.

83. In the event that any property described above as being subject to forfeiture, as a result of any act or omission by the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to or deposited with a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18 United States Code, Section 982 (b) (1), to seek forfeiture of any other property of ANDREW FASTOW up to the value of the above described property.