

**U.S. Department of Justice***Enron Task Force*

Washington, D.C. 20530

September 17, 2003

Robert S. Morvillo, Esq.
Morvillo, Abramowitz, Grand, Iason & Silberberg
565 Fifth Avenue
New York, NY 10022

Charles Stillman, Esq.
Stillman & Friedman
425 Park Avenue
New York, NY 10022

Re: Merrill Lynch & Co., Inc.

Dear Messrs. Stillman and Morvillo:

This letter sets forth the agreement between the Department of Justice, by the Enron Task Force (the "Department") and Merrill Lynch & Co., Inc. ("Merrill Lynch").

Introduction

1. The Department is conducting a criminal investigation into matters relating to the collapse of the Enron Corp. ("Enron"). During the course of the investigation, the Department notified Merrill Lynch that, in the Department's view, Merrill Lynch personnel have violated federal criminal law. In particular, the Department notified Merrill Lynch that certain Merrill Lynch employees: a) violated federal criminal law in connection with certain transactions initiated at year-end 1999 (the "Year-End 1999 Transactions");¹ b) aided and abetted Enron's violation of federal criminal law in connection with the same transactions; and c) knowingly made, and caused others to make, false statements before various tribunals, including a federal grand jury, the United States Congress, the United States Securities and Exchange Commission ("SEC") and a court-appointed bankruptcy examiner.

¹ These transactions relate to: a) Merrill's temporary "purchase" from Enron of Nigerian power barges (Enron Nigeria Barge Ltd.) and subsequent sale of the barges; and b) offsetting energy trades involving back-to-back options (the Enron Power Marketing, Inc. energy transactions).

2. Merrill Lynch acknowledges that the Department has developed evidence during its investigation that one or more Merrill Lynch employees may have violated federal criminal law. Merrill Lynch accepts responsibility for the conduct of its employees giving rise to any violation in connection with the Year-End 1999 Transactions. Merrill Lynch does not endorse, ratify or condone criminal conduct and, as set forth below, has taken steps to prevent such conduct from occurring in the future.

Agreement

3. Based upon Merrill Lynch's acceptance of responsibility in the preceding paragraph, its adoption of the measures set forth herein, its commitment to implement and audit such measures and its willingness to continue to cooperate with the Department in its investigation of matters relating to Enron, the Department, on the understandings specified below, agrees that the Department will not prosecute Merrill Lynch for any crimes committed by its employees relating to the Year-End 1999 Transactions. Merrill Lynch understands and agrees that if it violates this Agreement, the Department can prosecute Merrill Lynch for any crimes committed by its employees relating to the Year-End 1999 Transactions. This Agreement does not provide any protection to any individual or any entity other than as set forth above.

The understandings on which this Agreement is premised are:

4. Merrill Lynch shall truthfully disclose all information with respect to the activities of Merrill Lynch, its officers and employees concerning all matters relating to the Year-End 1999 Transactions about which the Department shall inquire, and shall continue to fully cooperate with the Department. This obligation of truthful disclosure includes an obligation upon Merrill Lynch to provide to the Department, on request, any document, record or other tangible evidence relating to the Year-End 1999 Transactions about which the Department shall inquire of Merrill Lynch. This obligation of truthful disclosure includes an obligation to provide to the Department access to Merrill Lynch's facilities, documents and employees. This paragraph does not apply to any information provided to counsel after July 31, 2000 in connection with the provision of legal advice and the legal advice itself.
5. Upon request of the Department, with respect to any issue relevant to its investigation of Enron, Merrill Lynch shall designate knowledgeable employees, agents or attorneys to provide non-privileged information and/or materials on Merrill Lynch's behalf to the Department. It is further understood that Merrill Lynch must at all times give complete, truthful and accurate information.
6. With respect to any information, testimony, document, record or other tangible evidence relating to Enron provided to the Department or a grand jury, Merrill Lynch consents to any and all disclosures to Governmental entities of such materials as the Department, in

its sole discretion, deems appropriate. With respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, Merrill Lynch further consents to a) any order sought by the Department permitting such disclosure and b) the Department's ex parte or in camera application for such orders. To the extent that the Department provides material pursuant to this paragraph to non-governmental parties, the Department will provide Merrill Lynch with 10 days advance notice, to the extent practicable, of what materials are to be provided and to whom.

7. Merrill Lynch further agrees that it will not, through its attorneys, board of directors, agents, officers or employees make any public statement, in litigation or otherwise, contradicting Merrill Lynch's acceptance of responsibility set forth above. Any such contradictory statement by Merrill Lynch, its attorneys, board of directors, agents, officers or employees shall constitute a breach of this Agreement, and Merrill Lynch thereafter would be subject to prosecution as set forth in paragraph 3 of this Agreement. Upon the Department's notifying Merrill Lynch of such a contradictory statement, Merrill Lynch may avoid a breach of this Agreement by publicly repudiating such statement within 48 hours after notification by the Department. This paragraph is not intended to apply to any statement made by any Merrill Lynch employee who has been charged with a crime.
8. Merrill Lynch agrees to adopt and implement by December 1, 2003, specific new policies and procedures relating to the integrity of client and counterparty financial statements and year-end transactions (the "Policies and Procedures"). The Policies and Procedures to which Merrill Lynch agrees are described in Exhibit A to this Agreement. Nothing in this Agreement precludes Merrill Lynch from amending or changing its Policies and Procedures in the future so long as said amendments or changes do not diminish the policies and procedures as set forth in Exhibit A. During the 18 month period set forth in paragraph 9 below, no amendments or changes will be made to the Policies and Procedures without the approval of the auditing firm and the individual attorney referred to in paragraph 9 below.
9. Merrill Lynch also agrees that for a period of 18 months, it will retain an independent auditing firm to undertake a special review of the Policies and Procedures set forth in Exhibit A. Merrill Lynch also will retain an individual attorney selected by the Department, who shall be acceptable to Merrill Lynch, to review the work of the auditing firm. The auditing firm and the attorney shall:
 - a) ensure that the Policies and Procedures are appropriately designed to accomplish their goals;
 - b) monitor Merrill Lynch's implementation of and compliance with the Policies and Procedures; and
 - c) report on at least a semi-annual basis to the General Counsel of Merrill Lynch and the Head of Corporate Audit as to the effectiveness of the

Policies and Procedures. The General Counsel shall then present a summary of this report to the Audit Committee of the Board of Directors for its review. Copies of these reports shall be submitted to the Department during this 18 month period.

10. It is further understood that should the Department, in its sole discretion, determine that Merrill Lynch has given deliberately false, incomplete, or misleading information under this Agreement, or has committed any crimes, or that Merrill Lynch otherwise violated any provision of this Agreement, Merrill Lynch shall, in the Department's sole discretion, thereafter be subject to prosecution for any federal criminal violation of which the Department has knowledge. Any such prosecutions may be premised on information provided by Merrill Lynch. Moreover, Merrill Lynch agrees that any prosecutions relating to Enron that are not time-barred by the applicable statute of limitations on the date of this Agreement may be commenced against Merrill Lynch in accordance with this Agreement, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and June 30, 2005. By this Agreement Merrill Lynch expressly intends to and does waive any rights in this respect.
11. It is further agreed that in the event that the Department, in its sole discretion, determines that Merrill Lynch has violated any provision of this Agreement; a) all statements made by or on behalf of Merrill Lynch to the Department, or any testimony given by Merrill Lynch before a grand jury, the United States Congress, the SEC, or elsewhere, whether prior or subsequent to this Agreement, or any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Department against Merrill Lynch and b) Merrill Lynch shall not assert any claim under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of Merrill Lynch prior to or subsequent to this Agreement, or any leads therefrom, should be suppressed.
12. The decision whether conduct and/or statements of any individual will be imputed to Merrill Lynch for the purpose of determining whether Merrill Lynch has violated any provision of this Agreement shall be in the sole discretion of the Department.
13. This Agreement expires on June 30, 2005. It is further understood that this Agreement is binding only on the Department and Merrill Lynch.

14. This Agreement may not be modified except in writing signed by all the parties.

Very truly yours,

LESLIE R. CALDWELL
Director, Enron Task Force





Andrew Weissmann
Deputy Director

MERRILL, LYNCH & CO., INC.

Robert Morvillo, Esq.
Counsel to Merrill, Lynch & Co.

Charles Stillman, Esq.
Counsel to Merrill, Lynch & Co.

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Very truly yours,

LESLIE R. CALDWELL
Director, Enron Task Force

Andrew Weismann
Deputy Director

MERRILL LYNCH & CO., INC.

by Barry J. Mandel
Barry J. Mandel
SVP and General Counsel, Global
Litigation and Employment

Robert Morvillo, Esq.
Counsel to Merrill, Lynch & Co.

Charles Stillman, Esq.
Counsel to Merrill, Lynch & Co.

EXHIBIT A**MERRILL LYNCH POLICIES AND PROCEDURES ON THE
INTEGRITY OF CLIENT AND COUNTER-PARTY
FINANCIAL STATEMENTS AND YEAR-END TRANSACTIONS**

The following sets forth Merrill Lynch & Co. Inc.'s plan for addressing the integrity of client and counterparty ("Third Party") transactions and year-end transactions. All employees must comply with the policies and procedures and violation of these policies and procedures may lead to disciplinary action, including termination.

General Prohibitions and Rules

Misleading Third Party Activities. Merrill Lynch may not engage in any transaction where Merrill Lynch knows or believes that an objective of the Third Party is to achieve a misleading earnings, revenue or balance sheet effect.

- **Undocumented Agreements.** Merrill Lynch will not engage in any transaction in which any term of the transaction related to risk transfer (whether or not legally enforceable) is not reflected in the written contractual documentation for the transaction.
- **Transactions With Agreed-Upon Early Terminations.** Merrill Lynch will not engage in any transaction in which there is an agreement between the parties (whether or not legally enforceable) to unwind such transaction prior to its stated maturity at an agreed-upon price unless Merrill Lynch accurately reflects the agreed-upon unwind on its books and records and provides a written summary of such transaction and unwind to the independent auditor of the Third Party.
- **Offsetting Transactions.** Merrill Lynch will not engage in any transaction having a substantially contemporaneous off-setting "leg" which offsets, in whole or substantially all of, the economics of the other leg of the transaction and is transacted with the same Third Party (or affiliate, related party or special purpose entity of the Third Party), unless such transaction is specifically approved by the Special Structured Products Committee ("SSPC").

Individual Accountability. Each employee responsible for proposing that Merrill Lynch enter into any transaction covered by these policies shall satisfy himself/herself that he/she is fully knowledgeable about all terms and agreements related to such transactions and that all applicable provisions of these policies and procedures and other Merrill Lynch policies and procedures have been fulfilled prior to execution.

Special Restrictions Applicable to Year-End Transactions

In light of the heightened danger of abuse in connection with "Year-End Transactions," the following policies and procedures apply specifically to such transactions:

- **Transactions Motivated by Accounting and Balance Sheet Considerations.** Merrill Lynch will not engage in any Year-End Transaction where Merrill Lynch knows or believes that the Third Party's primary motivation is to achieve accounting (including off-balance sheet treatment) objectives, unless such transaction is specifically approved by the SSPC.

New Committee and New Committee Approval Process

- Merrill Lynch will create a new committee and new approval process by creating the SSPC.
- The SSPC will review the Year-End Transactions and Offsetting Transactions referred to above.
- The SSPC also will review all complex structured finance transactions effected by a Third Party with Merrill Lynch. A "Complex Structured Finance Transaction" means any structured transaction where:
 - (i) a known or believed material objective of such transaction is to achieve a particular accounting or tax treatment, including the objective of transferring assets off-balance sheet ;
 - (ii) there is material uncertainty with regard to the legal or regulatory treatment of such transaction; or
 - (iii) the transaction provides the Third Party with the economic equivalent of a financing which, if characterized as a financing, would require relevant commitment committee approval.
- The SSPC will also review all early unwinds of any Complex Structured Finance Transaction and any Year End Transaction and any termination of such transaction prior to its originally contemplated maturity.
- The SSPC also will review any transaction, which any member of the SSPC determines is appropriate for SSPC review.
- Merrill Lynch will not engage in any transaction within the purview of the SSPC without the transaction receiving the approval of the SSPC.
- The SSPC will be composed of senior representatives (Head of group or experienced designee) of the various disciplines of the firm including Market Risk, Law and Compliance, Accounting, Finance, Tax and Credit. No transaction will be

deemed approved by the SSPC without the approval of all of the Heads of group (or experienced designee). The Committee will record each decision made in connection with any transaction and keep a record of the participants in any such meetings.

- The SSPC will be responsible for the effective management of all risks associated with transactions within its purview. As a result, the committee will ensure that an assessment of legal and reputational risk is undertaken with respect to each transaction. In this regard, the committee will review a variety of factors, including, without limitation, an assessment of whether financial, accounting, rating agency disclosure or other issues associated with a transaction are likely to create legal or reputational risks.
- To the extent the SSPC determines that any legal or reputational concern is present, it will review the overall customer relationship with the Third Party and shall obtain as a condition precedent to further review and approval, complete and accurate information about the Third Party's proposed accounting treatment of the contemplated transaction and the effect of the transaction on the Third Party's financial disclosure. To the extent the information provided is insufficient or unsatisfactory, the transaction will not be approved by the SSPC or executed by Merrill Lynch. If the SSPC determines that the proposed transaction is suspicious, it will refer the matter to Merrill Lynch's Global Money Laundering Reporting Officer.
- For each transaction considered, the SSPC will require the transaction sponsor to represent that such person is providing complete and accurate information regarding the transaction and the Third Party's purpose(s) for such transaction.
- In addition, a full description of each transaction approved by the SSPC will be communicated in writing to the independent auditor of the applicable Third Party.

Referrals to the SSPC

Merrill Lynch shall communicate to its GMI employees the substance of the following:

To ensure that all transactions that require approval of the SSPC are referred to that committee, these policies and procedures call for a broad category of transactions to be referred to the SSPC so that the SSPC can make the determination whether the transactions need the committee's approval. Accordingly, Merrill Lynch employees shall refer to the SSPC all transactions that

- An employee knows or believes may be motivated in whole or in part by the Third Party's desire to achieve a misleading earnings, revenue or balance sheet effect. Such referrals may be made anonymously, using the Merrill Lynch hotline (discussed below), or by other means.

- An employee knows or believes involve a contemplated agreement or understanding between the parties (whether or not legally enforceable) to unwind such transactions prior to its stated maturity at an agreed-upon price.
- Are Year-End Transactions as to which an employee knows or believes that the Third Party's primary motivation is to achieve accounting (including off-balance sheet treatment) objectives.
- Are transactions having a substantially contemporaneous off-setting "leg" which offsets, in whole or substantial aspects of, the economics of the other leg of the transaction and is transacted with the same Third Party (or affiliate, related party or special purpose entity of the Third Party).

Employees shall err on the side of referral to the SSPC if they have any question as to whether a transaction falls within the SSPC purview. Failure to refer transactions to the SSPC will be grounds for discipline, including dismissal.

- The formation and mandate of the SSPC, as well as the policies and procedures set forth herein, shall be communicated to all GMI employees and the various Product and Regional Chief Operating Officers shall be responsible for ensuring all applicable transactions are referred to the Committee for review. In this connection, Corporate Audit shall periodically monitor the referral process to ensure that it meets the objectives of the SSPC.

New Training Program

- Merrill Lynch will develop a comprehensive training program (to include computer training and formal training sessions) for all GMI personnel and all personnel supporting GMI (including all applicable Finance, Credit, Market Risk, Tax, Law and Compliance and Operations personnel) that will highlight issues/factors which, if present in a transaction, would warrant additional scrutiny. Among the specific issues to be addressed in the training are the new policies set forth above. Other issues/factors which may warrant additional scrutiny of the transaction and which will be included in the training program include but are not limited to the following:
 - Transactions where there is significant uncertainty with regard to the legal or regulatory treatment of the proposed transaction
 - Transactions with pre-agreed profit/loss sharing or return on equity/return on investment arrangements with the counter-party
 - Transactions known to be effected as a result of or in connection with changes to accounting principles or standards
 - Transactions with back-to-back (circular) cash flows between ML and the Third Party or its special purpose entity

Development of a Website

- Merrill Lynch will develop a GMI Policy and Approval Process Website that will articulate Merrill Lynch's applicable policies and the required approval process for the types of transactions described herein. This website will be available to all employees.

Employee Concerns, Ethics Hotline, Confidential Reporting

- The interactive website referenced above will provide opportunities for employees to communicate with the members of the SSPC concerning any reservations any such employee may have with any GMI transaction or the approval process related thereto.
- Additionally, employees will be encouraged to utilize the firm's Ethics Hotline as a mechanism to report inappropriate behavior and/or any failure to properly abide by these policies. Such reports may be made on a confidential and anonymous basis, and Merrill Lynch will not tolerate retaliation against those reporting any suspected violation in good faith. Those found to have retaliated will be subject to immediate dismissal.

Definitions

- "Year-End Transaction" shall mean any transaction effected within twenty-one (21) days of a Third Party's fiscal year-end period where there are continuing obligations between the parties subsequent to the year end period.
- "Third Party", "client" or "counterparty" shall mean any U.S. corporation that is registered under the Securities Exchange Act of 1934, any domestic or foreign affiliate of such corporation, any entity directly or indirectly controlled by such corporation, and any special purpose entity set up by such corporation.