United States Courts
Southern District of Texas
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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION LITIGATION	§	Civil Action No. H-01-3624 **(Consolidated)**
This Document Relates To:	§	CLASS ACTION
MARK NEWBY, et al., Individually and On Behalf of All Other Similarly Situated	§	
Plaintiffs,	§	
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	
vs.	§	
KENNETH L. LAY, JEFFREY K. SKILLING, ANDREW S. FASTOW, RICHARD A. CAUSEY, JAMES V. DERRICK, JR., et al.	§	

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U.S. COURTS
SOUTHERN DISTRICT
OF TEXAS

THE OUTSIDE DIRECTORS' MEMORANDUM CONCERNING CERTIFICATION OF CLASS CLAIMS UNDER SECTION 11

[This memorandum relates to docket entry Nos. 1048 & 1445]

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THE OUTSIDE DIRECTORS' MEMORANDUM CONCERNING CERTIFICATION OF CLASS CLAIMS UNDER SECTION 11

TO THE HONORABLE MELINDA M. HARMON:

The purpose of this memorandum is to respond to Plaintiffs' motion for class certification as it relates to claims arising under Section 11 of the Securities Act of 1933. *See* 15 U.S.C. §77k. The Outside Director Defendants[1][2] believe that a separate Section 11 class, with subclasses relating to particular note offerings, can be certified in compliance with Fed. R. Civ. P. 23. The behemoth class proposed by Plaintiffs, however, cannot be certified because:

(a) the class representatives lack standing to pursue the claims they seek to represent;

(b) the class includes claims that have already been dismissed by the Court;

(c) the class is not limited to the time periods dictated by Section 11 and the prior Order of this Court, i.e. the periods <u>after</u> the registration statement for the offering was filed and <u>before</u> a Form 10K was filed by Enron. *See* Memorandum and Order Regarding Enron Outside Director Defendants' (#1269) ("March Order") at 130-32; and

(d) the need to prove reliance under Section 10 is a predominant issue that precludes the certification of those reliance-based claims in a single class with Section 11 claims that do not require proof of reliance.

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[1]The Outside Director Defendants are Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Paulo V. Ferraz Pereira, Joe H. Foy, Wendy L. Gramm, Robert K. Jaedicke, Charles A. LeMaistre, John Mendelsohn, Jerome Meyer, John A. Urquhart, Charls E. Walker, John Wakeham, and Herbert Winokur, Jr.

[2]Counsel for defendants Richard A. Causey, Kenneth L. Lay, Rebecca Mark-Jusbasche, and Jeffrey K. Skilling have indicated they adopt the arguments set forth in this memorandum.

Accordingly, for the reasons stated in greater detail below, the Outside Director Defendants oppose Plaintiffs Motion for Class Certification as filed and believe that it should be denied. Instead, the Court should order Plaintiffs to re-submit their Class Certification Motion to request certification of tailored classes that conform to Fifth Circuit law and the Court's prior orders. That approach will yield the certification of a pure Section 11 class, with subclasses for each note offering, that can withstand the rigorous scrutiny the Fifth Circuit traditionally applies to motions for class certification.

I. Plaintiffs' Motion for Class Certification Should Be Denied

A. Plaintiffs' Lack Standing to Represent the Class They Propose

Plaintiffs' Motion for Class Certification seeks the certification of a single class, described as follows:

> [A]ll persons who purchased the publicly traded equity and debt securities of Enron Corporation ("Enron" or the "Company") between October 19, 1998 and November 27, 2001 (the "Class Period"), including the publicly traded securities issued by Enron-related entities during the Class Period, the value or repayment of which was dependent on the credit, financial condition, or ability to pay of Enron, and (ii) all states or political subdivisions thereof or state pension plans that purchased from defendants Enron's 6.40% Notes due 7/15/06 or 6.95% Notes due 7/15/28, and that authorize the prosecution of their claim pursuant to the Texas Securities Act (collectively, the "Class.").

See Newby Lead Plaintiff's Amended Motion for Class Certification ("Lead Plaintiff's Am. Mot.") at 1.[3] Lead Plaintiff expands this proposed class definition even further, in a footnote, to include:

> all persons who purchased during the Class Period [securities] issued by Enron-related entities as identified in ¶ 641.2 of the First Amended Consolidated Complaint filed in this action on May 14, 2003, including, without limitation, the specific securities listed in n.20 in ¶ 986.

Id. at n.1.

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[3]Unless otherwise noted, all emphasis in this memorandum is added.

This crazy-quilt class is at odds with Plaintiffs' Complaint, which recognizes that the Section 11 claims pertaining to Enron note offerings must be separated into subclasses. *See Newby* First Amended Consolidated Complaint filed May 14, 2003 ("Amended Complaint") at ¶ 1006 (designating a proposed "Class Representative" for each separate note offering). It is also at odds with settled Fifth Circuit and Supreme Court law, which states that "to have standing to sue as a class representative it is essential that a plaintiff must be a part of that class." *In re Taxable Mun. Bonds Litig.*, 51 F.3d 518, 522 (5th Cir. 1995) (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216 (1974)); *Bailey v. Patterson*, 369 U.S. 31, 32-33 (1962) (same).

This Court has observed that "standing and class certification must each be addressed on a claim by claim basis." *In re U.S. Liquids Secs. Litig.*, No. H-99-2785, 2002 Dist. LEXIS at *18 (S.D. Tex. Apr. 29, 2002) (citing *Steele Co. v. Citizens for a Better Env't.*, 523 U.S. 83, 105 (1998)). Standing under Section 11 is limited to the purchasers of "such security." 15 U.S.C. §77k. By definition, therefore, the Section 11 representative must have purchased the same security as the class it seeks to represent in order to have "individual standing to raise the legal claims of the class." *Id.* at * 5. The Regents, which bought no debt at all, have no Section 11 claim to pursue and thus cannot be class representatives for Section 11 claims. *See* 15 U.S.C. §77k (affording a claim under Section 11 only to the purchaser of "such security").[4] Purchasers of 7.875% Notes likewise do not

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[4] *See also Krim v. PCOrder.com, et al.*, 210 F.R.D. 581, 584-87 (W.D. Tex. 2002) (leave to appeal denied by Fifth Circuit on March 18, 2003); *Greater Iowa Corp. v. McLendon*, 378 F.2d 783, 789 (8th Cir. 1967)(plaintiffs who did not purchase securities at issue in 12(2) claim lacked standing and "were not entitled to maintain a class action on behalf of" persons who did). "[A] class representative must be part of the class and 'possess the <u>same interest</u> and suffer the <u>same injury</u>' as the class members." *East Texas Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 404-05 (1977) (citations omitted). *See also James v. City of Dallas*, 254 F.3d 551, 562 (5th Cir. 2001) ("A litigant must be a member of the class which he or she seeks to represent at the time the class action is certified by the district court."); *In re Taxable Mun. Bonds Litig.*, 51 F.3d at 522 ("to have standing to sue as a class representative it is essential that a plaintiff must be a part of that class").

have the "same interest" or "suffer the same injury" as purchasers of the 7% Exchangeable Notes, because they bought different securities sold pursuant to different registration statements and offering documents. *See also Basch v. Talley Indus.*, 53 F.R.D. 14, 19 (S.D.N.Y. 1971)("Since none of the named plaintiffs could recover as a member of the Stock Fraud Class alone none can be the representative of such Class"). Nor can purchasers of one class of debt security serve as a Section 11 class representative for those who purchased other forms of debt--because each Section 11 claim is limited to purchasers of "such" security. Similarly, persons who bought 7.375% Notes cannot represent a class of those who purchased Zero Coupon Convertible Notes – an entirely different security – two years later because they lack standing to represent that claim. Plaintiffs' broad request for class certification must, therefore, be rejected as to Section 11.[5]

Plaintiffs' demand for a mass class is particularly perplexing because it is at odds with both their complaint[6] and their prior statements in pleadings to this Court. Plaintiffs' complaint clearly recognizes that subclasses are required under Section 11. *See* Amended Complaint at ¶¶ 986, 1006, 1014-15. Plaintiffs also recognize the Court must address their standing deficiencies and that the appropriate time to do so is at the class certification stage:

> [T]he court has already determined the proper time to address issues of standing is at the class certification stage. *See* August 7, 2002 Order at 6. As the Court stated,

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[5]Plaintiffs' reliance on *In re Am. Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.*, 49 F.3d 541 (9th Cir. 1995) is misplaced. That the Courts of the Ninth Circuit do not impose a rigorous standing requirement is no basis upon which this Court can depart from the clear Fifth Circuit law requiring that standing be established at the class certification stage. *In re Taxable Mun. Bonds Litig.*, 51 F.3d 518, 521-22 (5th Cir. 1995); *see also In re U.S. Liquids*, 2002 Dist. LEXIS 26714 at *16-18 (requiring the plaintiff to establish standing at class certification on a claim by claim basis).

[6]Plaintiffs originally labeled a section in their Complaint "Sub-Class Representatives," *see* Consolidated Complaint at ¶ 1006, but altered the wording in the Amended Complaint. Regardless, the meaning is clearly the same, especially in light of Plaintiffs' continuing references to "Offering Subclasses." *See* Amended Complaint at ¶¶ 986, 1014-15.

> "around the time of class certification," the Court "will deal with ...issues [of standing] through the creation of classes or subclasses and with appropriate class representatives having standing to pursue those claims."

See Lead Plaintiff's Memorandum In Opposition to the Bank Defendants' Motions to Dismiss the First Amended Consolidated Complaint at 46 (ellipses and internal quotations in original). Plaintiffs then argued that "the better course may be to entertain an amended complaint setting up separate subsets of the proposed class, rather than simply to dismiss the claim, as the Bank Defendants would have the Court do." *Id.* at 47. Class Certification has arrived. The time to address standing and subclasses is now, rather than later--after the lengthy appellate process that is sure to result from a certification of the over-broad, unmanageable class proposed by Plaintiffs.

B. Plaintiffs' "Mass Class" of "All Purchasers of Enron Securities" Also Cannot Be Certified Under Rule 23 and Existing Fifth Circuit Law

Standing is a threshold requirement, but it is not the only requirement that must be met before a class can be certified. The Fifth Circuit also requires a "rigorous analysis of the Rule 23 prerequisites" before a class can be certified.[7] *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 744 (5th Cir. 1996). Central to that rigorous analysis is a consideration of "how the case will be tried." *O'Sullivan v. Countrywide Home Loans, Inc.*, 319 F.3d 732, 738 (5th Cir. 2003).

Plaintiffs' "mass class" motion falls far short of this mark. It makes no effort to assist the Court in formulating a trial plan--likely because no manageable trial plan can be formed for such a broad, amorphously described "class." Included within Plaintiffs' proposed single class are purchasers of different classes of securities (debt, equity, preferred stock of Enron and "Enron-

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[7] The general requirements that must be met in order to certify a class under Rule 23 are addressed elsewhere, including, Certain Defendants' Brief in Opposition to Class Certification of Plaintiffs 10(b) and 10b-5 Claims. Rather than repeat those arguments here, we incorporate them by reference as if set forth in full.

related" securities), at different times (over a three year period) with different claims for relief (arising under Sections 10, 11 and 12 of the Securities and Securities Exchange Acts, as well as state statutory claims) that encompass different types of proof (some require proof of reliance or scienter, and some do not) and against different parties (Section 12 claims are asserted only against the Bank Defendants; 20A claims are asserted against only certain officer defendants; Section 10 claims against the Outside Directors have been dismissed; and each Section 11 claim pertains to a different note offering, for which there were different registration statements, different signatories and different defendant underwriters). Also included within this class definition are claims the Court has already dismissed in its prior orders, such as claims under Section 11 by parties who have not plead reliance but are required to do so. *See* March Order at 130.

Plaintiffs' Amended Complaint seemed to recognize the critical nature of the need to form an adequate trial plan, because it identified proposed subclasses for each note offering. *See* Amended Complaint at ¶¶ 986, 1006, 1014-15. Plaintiffs' Motion for Class Certification inexplicably (and erroneously) abandons that approach and argues instead for a "kitchen sink," mass class. However, Plaintiffs' Motion gives the Court no basis upon which to conclude that Plaintiffs' proposed class can be certified. This is apparent if the Court contemplates the following questions relevant to the formulation of an adequate trial plan:

- If there is a single class, what will the jury interrogatories look like?
- How will the damages questions be formulated for a class of this breadth? More important, who recovers those damages if the parties who "represent" the claims do not have standing to pursue them?
- How can "the class" recover on Section 11 – when many (if not most) of its members did not purchase registered securities at all?

- How can the Defendants' "due diligence" affirmative defense be submitted properly when, by definition, the facts that were known to them for an offering in 1997 are dramatically different than those known to them for an offering that occurred four years later?

- How can the Outside Directors' proportionate fault defense under Section 11 be submitted properly, on a mass basis, when the officers, directors and underwriters involved in particular offerings differed from offering to offering?

- How can a "mass class" be certified, including claims under Section 10 and Section 11, when plaintiffs asserting the former must prove reliance and scienter and this Court has already dismissed all Section 11 claims requiring proof of reliance and scienter, leaving only Section 11 claims that do not?[8]

In considering "how the case will be tried," *Countrywide*, 319 F.3d at 738, this Court must identify:

> the substantive issues that will control the outcome, assessing which issues will predominate, and then determining whether the issues are common to the class. Although this inquiry does not resolve the case on its merits, it requires that the court look beyond the pleadings to "understand the claims, defenses, relevant facts, and applicable substantive law."

Id.; *see also Castano*, 84 F.3d at 744. Plaintiffs' motion fails when measured against these requirements, because there is no way the massive class they propose could be tried manageably.[9]

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[8]The Fifth Circuit's decisions in *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 744 (5th Cir. 1996), and, *Simon v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 482 F.2d 880 (5th Cir. 1973), make clear that reliance-based claims cannot be consolidated on a class-wide basis with claims, such as the Section 11 claims here, that do not require proof of the predominant, reliance element.

[9]The Court dismissed the Texas Securities Act claims against the Outside Director Defendants in the *Newby* action, *see* March Order at 150, and lead Plaintiff has not repled the TSA Claims against the Outside Directors, *see* Amended Complaint. Although Plaintiffs' Motion for Class Certification proposes that Washington State Investment Board be designated as a class representative for the Texas Securities Act claims, Lead Plaintiff's Am. Mot. at 1, n.1, the Washington State Board's complaint suffers from the same, fatal deficiencies that plagued the *Newby* Complaint. Motions to Dismiss the WSIB claims, on the same grounds that resulted in the dismissal of the Texas Securities Act claims in *Newby*, are scheduled to be filed shortly. In the event the Court concludes that those claims can survive, the Outside Directors will file a supplement detailing how--if at all--those unique, state law causes of action can be dealt with under Rule 23.

This is not because no class can be certified, but rather because Plaintiffs have failed to apply techniques – including more careful class definition and the use of subclasses – necessary in order to form a class that conforms to Rule 23.

II. Use of Subclasses Directed to the Section 11 Claims Ensures That the Representatives Will Have Standing to Pursue Their Claims and That the Requirements of Rule 23 Will Be Met

Although the Outside Director Defendants object to the class Plaintiffs have proposed, these defendants would have no objection to the formation of a separate Section 11 class, with distinct subclasses for each note offering made the basis of Section 11 claims in compliance with Rule 23 and the requirements of Section 11.[10] Specifically, these Defendants believe that a class can be certified along the following lines:

- **Each Note Offering Should Have A Distinct Subclass.** The Court should create separate classes or subclasses for each note offering, because the proposed class representatives have standing only to represent a class of holders of securities that the representative actually purchased.[11] *See* 15 U.S.C. §77k (affording a right of action under Section 11 only to "any person acquiring such security"); *see also Rivera v.*

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[10]So long as the Section 11 claims are separated from those that arise under Section 10 and 12, it is largely a matter of semantics whether the Court certifies a single Section 11 class--with separate subclass representatives for each note offering--or separate classes for each note offering. *See* Fed. R. Civ. P. 23(c)(4) ("When appropriate an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.") The point is, each class must be separated--and separately represented--by note offering in order to ensure that the class (or subclass) conforms to the requirements of Rule 23--including, specifically, the requirement that it be represented by a plaintiff with standing to pursue the claims.

[11]As this Court has found: "It should be obvious that there cannot be adequate typicality between a class and a named representative unless the named representative has individual standing to raise the legal claims of the class." *In re U.S. Liquids Secs. Litig.*, 2002 U.S. Dist. LEXIS 26714, at *16 (quoting *Prado-Steinman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000)).

Wyeth-Ayerst Labs, 283 F.3d 315, 319 (5th Cir. 2002) ("Standing is an inherent prerequisite to the class certification inquiry."). In addition, the alleged misrepresentations in the relevant registration statements differ from offering to offering. Many of the offerings pre-date the misrepresentations at issue in the complaint itself.[12] As a result, while claims by purchasers of the same notes share common questions that predominate, claims by purchasers of different notes raise different misrepresentations and common questions do not predominate across the note offerings.

- **The Zero Coupon Convertible Note Class Or Subclass Definition Should Be Limited To Include Only Purchasers *After* The Registered Offering.** For the Zero Coupon Convertible Notes, which originated as a Rule 144A private placement that was subsequently registered, the Court has ruled that the Section 11 claims are limited only to those persons who purchased in the registered offering. *See* March Order at 132. Claimants who purchased in the 144A private placement therefore lack standing to pursue a Section 11 claim and cannot be included among a class of Section 11 claimants.[13] Accordingly, the subclass for the zero coupon convertible notes should be limited in accordance with the Court's prior order to only those persons who purchased those notes issued pursuant to the Registration Statement that was filed on July 18, 2001. *See* Amended Complaint at ¶ 1006.

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[12] *See, e.g.,* Washington State Board Allegations concerning offerings in 1997. Washington State Investment Board Complaint, C.A. H-02-3401, at ¶ 1. These offerings occurred before transactions that were ultimately the subject of the Restatement at issue in the Section 11 claims.

[13] The sole claim available to purchasers in the 144A private placement is under Section 10.

- **Each Note Class Definition Should Be Limited To Include Only Purchases Prior To The Filing Of A Form 10K.** The Court has also dismissed Section 11 claims on behalf of persons who purchased after the filing of a cumulative Form 10K, "because Lead Plaintiff has failed to plead reliance by any of these parties." *See* March Order at 130. *See also* 15 U.S.C. §77k(a) (requiring proof of reliance by persons who purchased after the issuer has made available an earnings statement covering a period of at least twelve months beginning after the effective date of the registration statement). Accordingly, the Section 11 claims for each note offering class should be limited to persons who purchased notes after the registration statement and before the filing of a cumulative Form 10-K. *Id.*

Designation of Section 11 subclasses in this fashion will ensure that the Court is able to form a judgment that awards damages, if any, only to those parties who have standing to proceed on the Section 11 claims.

A. Subclasses Are Required to Ensure the Class Representatives Have Standing

There is no question that class certification in *Newby* requires subclasses that correspond to the securities at issue. "[A] class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *East Texas Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 404-05 (1977) (citations omitted). *See also James v. City of Dallas*, 254 F.3d 551, 562 (5th Cir. 2001) ("'A litigant must be a member of the class which he or she seeks to represent at the time the class action is certified by the district court.'"); *In re Taxable Mun. Bonds Litig.*, 51 F.3d at 522 ("to have standing to sue as a class representative it is essential that a plaintiff must be a part of that class"). Section 11 makes clear that a claim exists only for purchasers of "such

security." 15 U.S.C. §77k(a). Purchasers of 7.875% Notes do not have the "same interest" or "suffer the same injury" as purchasers of the 7% Exchangeable Notes, because they bought different securities. *See also Basch v. Talley Indus.*, 53 F.R.D. 14, 19 (S.D.N.Y. 1971)("Since none of the named plaintiffs could recover as a member of the Stock Fraud Class alone none can be the representative of such Class").[14] This is a substantive issue that controls the outcome. *See Castano*, 84 F.3d at 744. Without having purchased the individual security at issue in the Section 11 claims, the class representative's claim will necessarily fail. Accordingly, subclasses must be formed in order to ensure that the representatives have standing and that common facts predominate.

The Court should also enforce, in its class certification order, its prior rulings limiting the Section 11 claims to only those parties that can validly pursue them. Thus, the Section 11 subclasses should be limited to those parties who purchased after the registration statement was filed, *see* March Order at 132 (holding that purchasers in a 144A offering have no standing to pursue Section 11 claims) and before a cumulative Form 10K was filed. *See id.* at 130 (dismissing Section 11 claims by parties who purchased after a cumulative Form 10K was filed because they failed to plead reliance). Accordingly, phrased properly, the Section 11 subclasses should be formed as follows:

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[14]*See also Greater Iowa Corp. v. McLendon*, 378 F.2d 783, 789 (8th Cir. 1967) (holding that plaintiffs that did not purchase securities at issue in 12(2) claim lacked standing to bring the claim and were "not entitled to maintain a class action on behalf of" persons who did); *Gabrielson v. BancTexas Group, Inc.*, 675 F. Supp. 367, 371 n.3 (N.D. Tex. 1987) (class complaint must be dismissed for lack of standing when proposed representative lacked standing, even if the persons described in the complaint would themselves have standing to sue).

- All purchasers of 7.375% Notes due May 15, 2019 who purchased their notes during the period from May 19, 1999 through and including March 30, 2000.[15]
- All purchasers of 7% Exchangeable Notes due July 31, 2002 who purchased their notes during the period from August 10, 1999 through and including March 30, 2000.
- All purchasers of 8.375% Notes due May 23, 2005 who purchased their notes during the period from May 18, 2000 through and including April 2, 2001.
- All purchasers of 7.875% Notes due June 15, 2003 who purchased their notes during the period from May 18, 2000 through and including April 2, 2001.
- All purchasers of debt securities issued pursuant to a registration statement filed by Enron Corporation on September 12, 1997, *see* Complaint of Washington State Investment Board at ¶ 58, during the period from September 12, 1997 through and including March 31, 1998.
- All purchasers of debt securities issued pursuant to a registration statement filed by Enron Corporation on December 19, 1997, *see* Complaint of Washington State Investment Board at ¶70, during the period from December 19, 1997 through and including March 31, 1998.

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[15] Each proposed class begins with the filing of the registration statement and ends with the filing of a Form 10K by Enron.

- All purchasers of Zero Coupon Convertible Notes after July 18, 2001 who purchased pursuant to the registration statement.[16]

Finally, in its class certification order, the Court should require the Plaintiffs to substitute class representatives who actually have standing to pursue the claims they seek to represent. In particular, proposed class representative Staro Asset Management has testified that it did not purchase any of the Zero Coupon Convertible Notes. Rather, those notes were purchased by three funds managed by Staro,[17] each of which is actually the record holder of the securities in question.[18]

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[16] Plaintiffs' concede that the Registration Statement was filed for these notes on July 18, 2001. The Court has held that 144A purchases prior to that date are not actionable under Section 11. *See* March Order at 132.

[17]Staro's Investment Analyst testified:

Q. Is Staro Asset Management the purchaser of the securities here, or is it the funds that you manage?
A. I believe it's the funds that we manage –
Q. All right.
A. – purchase the securities.
Q. So the record holder of the Enron zero convertible notes and the people whose capital was invested in it are Stark, Shepherd, Reliant?
A. I believe that's true, yes.
Q. Not Staro Asset Management?
A. That is correct.
Q. Okay. As far as you know, Staro Asset Management, LLC, did not purchase for its own account a single zero coupon convertible bond?
A. To the best of my knowledge, I believe that's correct.

Deposition of Donald Trent Bobbs, September 10, 2003, 85:7-23 (attached as Ex. A) (emphasis added).

[18] Staro's representative also admitted that many of their funds' purchases were derivative purchases where they purchased the "economic risk" represented by the Zero Coupon Notes, but not the notes themselves. Bobbs Testimony at 135:6-136:17 (Ex. A). These derivative purchases must be excluded from the Section 11 class--although they are included in the definition proposed above--because the purchase of a derivative is not the purchase of the security issued pursuant to the registration statement as required by Section 11.

This standing issue is not limited to Staro Asset Management.[19] In fact, the same need to substitute real parties in interest plagues the claims by Amalgamated Bank which is suing in a representative capacity on behalf of other entities that are actually the holders of record of the notes at issue. Although we have no objection to substitution of the real parties in interest for each of these proposed class representatives, it is clear that substitution must occur in order to cure this standing deficiency.[20]

B. Proper Subclassing Would Insure That Common Issues Predominate

Entry of an order requiring an appropriate Section 11 class, with subclass representatives who have standing, will avoid the difficulties that led to a reversal of class certification in *Castano* and *Countrywide*. The District Court that certified the class in *Castano* was criticized because "it was impossible for the court to know whether the common issues would be a 'significant' portion of the individual trials. The court just assumed that because the common issues would play a part in every trial, they must be significant." *Castano*, 84 F.3d at 745. Here, the Court need not make such an assumption; it is demonstrably true that the unique defense afforded under Section 11 – the defendants' due diligence – will predominate in every trial of every Section 11 claim.

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[19]Alliance Capital Management has objected that Staro Asset Management, because it did not purchase the securities at issue, cannot serve as a class representative at all. We agree with Alliance as to that point, but believe that the Staro-advised funds (Stark, Shepherd and Reliant) -- if they demonstrate purchases pursuant to the registration statement -- are adequate representatives for the Zero Coupon purchaser class because their trading records established that they actually purchased Zero Coupon Convertible Notes after the registration statement was issued. *See* Ex. "141" to Bobbs Deposition, attached as Exhibit "B" to this memorandum.

[20]We recognize that these entities may ultimately offer evidence through the testimony of their advisers (such as Staro Asset Management). The issue is not how they establish their claim; rather, it is to ensure that the parties representing the class actually have the claim they purport to represent and are properly subject to any defense that is unique to them.

When one considers the trial plan for these claims, *see Countrywide*, it becomes apparent that the existence of alleged misrepresentations in each registration statement and the defendants' due diligence regarding those alleged misstatements are predominant issues in the trial of each individual offering. Proof that the financial statements included in particular registration statements were allegedly misleading will, in itself, consume a massive amount of trial time in every Section 11 trial were each note claim to be tried individually. Why? Because that is the first burden the Section 11 plaintiff must meet; namely, she must prove that there was a material misstatement or omission in a registration statement. *See* 15 U.S.C. §77k.

The second element of the Section 11 claim, the Defendants' due diligence defense, is also a common and predominant element of every Section 11 trial. Section 11 provides that a defendant shall not be liable if he sustains his burden to prove that

> he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

15 U.S.C. §77k(b)(3).

For every Section 11 claim on the 7.375% Notes, therefore, the evidence of the directors' diligence will be the same and it will predominate. Why? Because the diligence of the directors did not vary as to that particular offering. More important, the proof of the directors' diligence will, in itself, consume a massive amount of trial time on every Section 11 claim. It will include evidence establishing that the Board acted with diligence and that Board members were reasonable in relying upon the expert opinions of Arthur Andersen – who (Plaintiffs admit) assured them every year that Enron's financials were "presented fairly in all material respects in accordance with Generally

Accepted Auditing Principles." Amended Complaint at ¶ 899. The same is true of the due diligence defenses proffered for other defendants who have the same statutory, affirmative defense. *See* 15 U.S.C. §77k(b)(3) (affording due diligence defense to officers and underwriters). Accordingly, there is no question that the proof of this unique and class-wide affirmative defense predominates over any individual issues. *See* Fed. R. Civ. P. 23 (b)(3).

An additional reason to certify a Section 11class is that it will promote judicial efficiency to try this defense only once. Trying this affirmative defense on a single occasion will be dispositive of all claims in a class context. If the defendants prevail on this defense, no Section 11 claim can survive. In contrast, absent proof of privity or the other elements required to enforce offensive collateral estoppel,[21] a victory on this defense in an individual case simply means that case number 2 – or case number 32 – must now be tried. For parties with limited insurance coverage, and for whom the issues will in all senses be identical for every single Section 11 claim, this is hardly efficient.

This case also differs in important respects from *Castano* and *Countrywide*, in which the District Court decisions granting class certification were reversed by the Fifth Circuit. Unlike in *Castano*, individual reliance is not an issue under these Section 11 claims. All reliance-based Section 11 claims have been dismissed. *See* March Order at 130-32. There is therefore no risk here that reliance – an otherwise individual issue – will swamp the predominant common issues raised by the Section 11 claims. In contrast to *Countrywide*, Section 11 is not a claim on which individual calculations of damages will swamp the efficiencies to be gained from class certification. While the calculation of damages under Section 11 is individual, in the sense that it requires proof of purchase

---

[21] *See generally, Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979).

price and sales price by each plaintiff, 15 U.S.C. §77k, it is in every sense formulaic. *See Bell Atlantic Corp. v. A T & T Corp.*, 339 F.3d 294, 306-07 (5th Cir. 2003)(recognizing that courts have certified classes where damages vary, so long as they are "susceptible to a mathematical or formulaic calculation.") The jury considering the Section 11 claims need not determine what the "true value" of Enron stock was at any particular point in time; rather, the calculation of damages is a purely arithmetic function. *See* 15 U.S.C. §77k(e).[22] In sum, unlike in *Countrywide* and *Castano*, common questions here are predominant and massive efficiencies will be gained from trying these Section 11 claims only once--because only one trial is needed to resolve all predominant questions. Accordingly, with the use of appropriate subclasses, this Court can and should certify Plaintiffs' Section 11 claims and the related control person claims under Section 15.

III. Conclusion

For the reasons stated, Plaintiffs' Motion for Class Certification should be denied. As in *In re U.S. Liquids*, however, this Court should direct Plaintiff to re-file its motion for class certification

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[22]Under Section 11, the arithmetic calculation of damages is statutorily defined as:

> the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: *Provided,* That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable.

15 U.S.C. §77k(e).

to seek the certification of a separate, Section 11 class with appropriate subclasses that conform to this Court's March Order and to governing Fifth Circuit law. Specifically, no class should be certified unless a separate Section 11 class is formed, with the following subclasses represented by a plaintiff with standing:

(1) All purchasers of 7.375% Notes due May 15, 2019 who purchased their notes during the period from May 19, 1999 though and including March 30, 2000;

(2) All purchasers of 7% Exchangeable Notes due July 31, 2002 who purchased their notes during the period from August 10, 1999 through and including March 30, 2000;

(3) All purchasers of 8.375% Notes due May 23, 2005 who purchased their notes during the period from May 18, 2000 through and including April 2, 2001;

(4) All purchasers of 7.875% Notes due June 15, 2003 who purchased their notes during the period from May 18, 2000 through and including April 2, 2001;

(5) All purchasers of debt securities issued pursuant to a registration statement filed by Enron Corporation on September 12, 1997, *see* Complaint of Washington State Investment Board at ¶ 58, during the period from September 12, 1997 through and including March 31, 1998;

(6) All purchasers of debt securities issued pursuant to a registration statement filed by Enron Corporation on December 19, 1997, *see* Complaint of Washington State Investment Board at ¶70, during the period from December 19, 1997 through and including March 31, 1998; and

(7) All purchasers of Zero Coupon Convertible Notes after July 18, 2001 who purchased pursuant to the registration statement.

Dated: October 16, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by sending a copy via electronic posting to www.ESL3624.com on this 16th day of October, 2003.

Aundrea K. Frieden

Aundrea K. Frieden

Exhibit A

1 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
2 HOUSTON DIVISION
3 IN RE ENRON CORPORATION X CIVIL ACTION NO.
SECURITIES LITIGATION X H-01-3624 (CONSOLIDATED)
4 _____ X
X CLASS ACTION
5 THIS DOCUMENT RELATES TO: X
X
6 MARK NEWBY, ET AL., X
INDIVIDUALLY AND ON X
7 BEHALF OF ALL OTHERS X
SIMILARLY SITUATED, X
8 X
PLAINTIFFS, X
9 X
VS. X
10 X
ENRON CORP., ET AL., X
11 X
DEFENDANTS. X
12 _____ X
X
13 THE REGENTS OF THE X
UNIVERSITY OF CALIFORNIA, X
14 ET AL., INDIVIDUALLY AND X
ON BEHALF OF ALL OTHERS X
15 SIMILARLY SITUATED, X
X
16 PLAINTIFFS, X
X
17 VS. X
X
18 KENNETH L. LAY, ET AL., X
X
19 DEFENDANTS. X
20
21 ----------
22 ORAL VIDEOTAPED DEPOSITION OF
DONALD TRENT BOBBS
23 SEPTEMBER 10, 2003
24 ----------
25

EXHIBITS

NO.	DESCRIPTION	MARKED/IDENTIFIED
137	Offering Memorandum	30/30
138	Class Action Complaint	59/59
139	Enron Corporation Certification Pursuant to the Federal Securities Laws	80/81
140	Form 8-K Dated 11/8/01	99/99
141	Schedule of All Enron Securities Transactions in Class Period	133/133
142	Reply Brief in Further Support of Staro Asset Management's Motion for Appointment as Lead Counsel on Behalf of Debt Securities Purchasers	143/143
143	Form S-3 Registration Statement	175/175
144	Confidential Memorandum Relating to Class A Shares of Capital Stock of Shepherd Investments International Limited	181/-
145	Confidential Private Placement Memorandum Dated Feb. 1, 1999	181/-
146	Stark Investments Overview	181/-
147	Declaration of Professor Steven P. Feinstein, Ph.D., CFA	202/202
148	Responses to First Set of Requests for Production of Documents Relating to Class Certification by the Bank Defendants to All Class Representatives	209/209

PROCEEDINGS

(September 10, 2003, 9:07 a.m.)

THE VIDEOGRAPHER: We are now on the record at 9:07 a.m. on September 10th, 2003, for the videotaped deposition of Donald Bobbs. The deposition is taking place at the Pfister Hotel, 424 East Wisconsin Avenue, Milwaukee, Wisconsin, on behalf of the defendants in the action entitled "Mark Newby, et al., vs. Enron Corporation, et al.," in the United States District Court for the Southern District of Texas, Houston Division, Cause Number H-01-3624.

My name is Dean Van Hoogen, with Brown & Jones Reporting, Milwaukee, Wisconsin. The court reporter is Lisa Durham, with the firm of Alpha Reporting Services. This is Tape Number 1. Would counsel and all present please identify themselves for the record?

MS. PATRICK: Kathy Patrick, Gibbs & Bruns, counsel for the outside directors of Enron

MS. SHELBY: Anne Shelby, from Paul, Weiss, here for the Citigroup defendants.

MR. QUINLAN: Guy Quinlan, Clifford Chance, representing Alliance Capital Management.

MR. FLORIANI: Joseph Floriani, from

Clifford Chance, also for Alliance Capital Management.

MR. DE GRAVELLES. Patrick P. de Gravelles, with Miller & Chevalier, representing Paulo Ferraz Pereira.

MR. MC NALLY: Daniel McNally, with Stark Investments.

MR. STOCK: Arthur Stock, Berger & Montague, representing the plaintiff.

MS. SAVETT: Sherry Savett, Berger & Montague, representing the plaintiff.

THE VIDEOGRAPHER: Would counsel please state any agreements or stipulations for the record?

MS. PATRICK: Just by the Rules.

THE VIDEOGRAPHER: The witness may now be sworn in.

(Witness sworn.)

MS. PATRICK: Before we begin, Mr. McNally, are you an in-house lawyer at Stark?

MR. MC NALLY: I am.

MS. PATRICK: Okay. Thanks.

DONALD TRENT BOBBS,

having been first duly sworn, testified as follows:

(No omissions)

EXAMINATION

BY MS. PATRICK:

Q. Would you tell us your full name, please?

A. Donald Trent Bobbs.

Q. Where do you work, sir?

A. Stark Investments.

Q. Who do you do there?

A. I'm an investment analyst.

Q. Do you have a CFA or any other professional licenses?

A. I do have a CFA.

Q. All right. Why don't you give me your educational history after high school, please.

A. I went to Indiana University and earned a bachelor of science degree in decision sciences. I left school for a couple of years and came back and have a master's of business administration in finance and investments from the same institution.

Q. Okay. What is decision sciences?

A. It's quantitative business analysis.

Q. Okay. After you received your MBA, where did you go to work, sir?

A. Northwestern Mutual Life Insurance Company.

Q And what did you do there?

A. I was an investment analyst there as well.

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7:20 1 Q. What's an arbitrage opportunity?
7:20 2 **A. An arbitrage opportunity means -- can mean**
7:20 3 **many different things, but where it's most known to**
7:20 4 **me is that when -- say securities by the same issuer**
7:20 5 **have mispricings among them that allow one to invest**
7:20 6 **in those securities such that the risk/reward**
7:20 7 **characteristics of investing in those two securities**
7:20 8 **is a better -- would provide the investor a better**
7:20 9 **risk-adjusted return than investing in one or the**
7:21 10 **other by itself.**
7:21 11 Q. When you use the word "mispricing," what do
7:21 12 you mean by that?
7:21 13 **A. It's valued in the marketplace at a price**
7:21 14 **that, as an analyst, I would not consider to be the**
7:21 15 **appropriate price.**
7:21 16 Q. And how would you go about determining what
7:21 17 you think is the appropriate price as distinct from
7:21 18 what the market values it at?
7:21 19 **A. Well, I'm an investment analyst, so the**
7:21 20 **real crux of my investments all originates from**
7:21 21 **analyzing publicly filed financial statements that**
7:21 22 **companies are required to issue that are presented**
7:21 23 **in accordance with generally accepted accounting**
7:21 24 **principles.**
7:21 25 **And I rely heavily upon those publicly**

Page 15

7:21 1 **filed financial statements to -- to -- to form my**
7:22 2 **opinions and to evaluate prices of securities that**
7:22 3 **are issued by companies who file those financial**
7:22 4 **statements.**
7:22 5 Q. I think my question must not have been
7:22 6 clear. How do you go about determining -- I mean,
7:22 7 what is your method for determining what you think
7:22 8 the price ought to be as distinct from what the
7:22 9 market price is?
7:22 10 **A. By using the underlying financial**
7:22 11 **statements, I can get a pretty good handle on**
7:22 12 **what -- quantitative and qualitative factors about a**
7:22 13 **particular company that's issuing securities. And**
7:22 14 **using the -- by analyzing these financial statements**
7:23 15 **and getting a good handle on earnings and cash flows**
7:23 16 **and things of that nature lends me to have the**
7:23 17 **ability to value the securities that these companies**
7:23 18 **issue.**
7:23 19 Q. Did you --
7:23 20 **A. And I -- and I then can tell, okay, here's**
7:23 21 **my valuation of a security. Here's what the**
7:23 22 **market's valuing the security at, and sometimes**
7:23 23 **there's a difference.**
7:23 24 Q. Did you work on Stark -- on the -- on the
7:23 25 Enron purchases or the Enron investment strategy for

Page 16

7:23 1 the various Stark-managed funds?
7:23 2 **A. Yes.**
7:23 3 Q. Okay. In doing that, did you review the
7:23 4 publicly filed financial statements of Enron?
7:23 5 **A. Yes, I did.**
7:23 6 Q. Where did you get them?
7:23 7 **A. From online. You know, we used 10k Wizard.**
7:23 8 **We use EDGAR Online. I believe we used the**
7:23 9 **company's website. I can't recall exactly where I**
7:24 10 **procured Enron's 10-K or 10-Q because we used so**
7:24 11 **many different resources to get these publicly filed**
7:24 12 **financial statements.**
7:24 13 Q. When was the first time you read an Enron
7:24 14 10-K?
7:24 15 **A. I don't recall.**
7:24 16 Q. 2000? 1999? Can you give me a --
7:24 17 **A. It would have -- the -- the first 10-K I**
7:24 18 **probably would have read would have been the --**
7:24 19 **the -- the 2000 10-K.**
7:24 20 Q. And why were you reading that?
7:24 21 **A. Actually, it would have been -- let me**
7:24 22 **correct myself. It would have been the 1999.**
7:24 23 Q. Why do you say it would have been the 1999
7:24 24 10-K?
7:24 25 **A. Because I don't think the 2000 10-K was**

Page 17

7:24 1 **available at the time the securities that we were**
7:25 2 **contemplating purchasing was available.**
7:25 3 Q. Do you make an effort to thoroughly
7:25 4 understand the 10-K issued by a company before you
7:25 5 decide to purchase its securities?
7:25 6 **A. Absolutely.**
7:25 7 Q. And when you reviewed the 1999 and 2000
7:25 8 10-Ks, did you do that before you made any purchase
7:25 9 of Enron securities?
7:25 10 **A. Like I said, I'm not sure if the 2000 10-K**
7:25 11 **was available. I'm not sure if it was available in**
7:25 12 **April or May of 2001, or March. I -- I just don't**
7:25 13 **recall. So I don't know about the 2000. I'm quite**
7:25 14 **sure that we reviewed the 1999 10-K and certainly**
7:25 15 **the 10-Qs that were issued in 2000 prior to**
7:26 16 **purchasing securities in 2001.**
7:26 17 Q. Okay. But my question was: Whether it's
7:26 18 1999 or 2000, did you read a 10-K for Enron before
7:26 19 you made your first investment in Enron securities?
7:26 20 **A. Yes.**
7:26 21 MS. SAVETT: Objection. Asked and
7:26 22 answered.
7:26 23 Q. (BY MS PATRICK) Can -- can -- your answer
7:26 24 was yes?
7:26 25 **A. Yes.**

Page 22

7:31 1 documents were -- whether portions of documents were
7:31 2 obliterated before they were produced to us, or
7:31 3 excised?
7:31 4 **A. I can't imagine that that would have**
7:31 5 **occurred.**
7:31 6 Q. If it -- if it --
7:32 7 **A. But I don't -- I'm not quite sure it**
7:32 8 **didn't, but I know it wasn't on my part.**
7:32 9 Q. Some of -- the reason I ask, some of the
7:32 10 price -- private placement memoranda for the various
7:32 11 funds that Staro manages were produced only in
7:32 12 part. Do you know why that is?
7:32 13 **A. I do not know.**
7:32 14 Q. Do you know who it was that made that
7:32 15 decision?
7:32 16 **A. No, I do not.**
7:32 17 Q. All right. So if we want to know whether
7:32 18 there are other documents that would be responsive
7:32 19 to the document request or why certain documents
7:32 20 have been redacted, who do you think we should talk
7:32 21 to?
7:32 22 **A. I guess our attorneys.**
7:32 23 Q. Okay. Mr. McNally?
7:32 24 **A. I -- I would assume. I don't know who else**
7:32 25 **I would tell you to contact.**

Page 23

7:32 1 Q. Who else are your attorneys in -- in this
7:32 2 case, Mr. Bobbs, if you know?
7:32 3 **A. Well, the folks from Berger and & Montague**
7:32 4 **is our outside counsel.**
7:33 5 Q. Have they represented you in other matters
7:33 6 before?
7:33 7 **A. Yes, they have.**
7:33 8 Q. Have you given a deposition before, sir?
7:33 9 **A. No, I have not.**
7:33 10 Q. Okay. In what other matters has Berger &
7:33 11 Montague represented you, please?
7:33 12 **A. I think there are three or four other**
7:33 13 **matters. One -- we are a class representative in**
7:33 14 **Sepracor that they represent us on.**
7:33 15 Q. Spell it, please.
7:33 16 **A. S-e-p-r-a-c-o-r. They represent us as a**
7:33 17 **class representative in Global Crossing. And I**
7:33 18 **think -- I'm quite sure that they represented us in**
7:33 19 **an individual case in something that has been**
7:33 20 **settled, in a company called Inacom.**
7:33 21 Q. Spell it, please.
7:33 22 **A. I-n-a-c-o-m.**
7:33 23 Q. Okay.
7:33 24 **A. And I think that's it in terms of their**
7:34 25 **representation of us.**

Page 24

7:34 1 Q. What was the Sepracor case? You said you
7:34 2 were a class representative; is that right?
7:34 3 **A. Uh-huh.**
7:34 4 Q. Were -- were you appointed the lead
7:34 5 plaintiff in that case?
7:34 6 **A. I don't recall the details of those**
7:34 7 **cases. I just know that Berger & Montague is our**
7:34 8 **representatives. I'm not really involved -- was**
7:34 9 **never involved in those cases within our firm. I**
7:34 10 **think we're a -- I just don't recall.**
7:34 11 Q. How about in Global Crossing? Were you
7:34 12 appointed the lead plaintiff there, if you know?
7:34 13 **A. Don't recall, no.**
7:34 14 Q. What about the case involving Iowa Beef
7:34 15 Processors and Tyson Foods? Do you know anything
7:34 16 about that?
7:34 17 **A. I know or I believe that we are a class**
7:34 18 **representative in that case as well, and we're**
7:34 19 **represented by Quarels & Brady.**
7:34 20 Q. In Arizona?
7:34 21 **A. I don't know if it's Milwaukee or Arizona,**
7:35 22 **or where -- out of which office Quarels is**
7:35 23 **representing us, but I think they're representing**
7:35 24 **us.**
7:35 25 Q. Is -- are any other -- are Staro or any of

Page 25

7:35 1 its affiliates parties to any other litigation
7:35 2 currently?
7:35 3 **A. I think there's a case involving AOL, where**
7:35 4 **we're represented by Abbey, but I don't know of**
7:35 5 **any -- I don't know of any others.**
7:35 6 Q. When you say you're represented by Abbey,
7:35 7 what do you mean by that?
7:35 8 **A. The law firm, Abbey --**
7:35 9 Q. The class action firm?
7:35 10 **A. I believe so, yes.**
7:35 11 Q. Has any Staro affiliate ever been the
7:35 12 defendant in a lawsuit in the last five years?
7:35 13 **A. I'm not familiar with any of the details on**
7:36 14 **where we may be the defendant.**
7:36 15 Q. Well, whether you're familiar with the
7:36 16 details or not, has --
7:36 17 **A. I don't know.**
7:36 18 Q. You don't know. Has -- are you aware of
7:36 19 any limited partners ever filing complaints against
7:36 20 Staro or sending complaint letters contending that
7:36 21 Staro had breached its fiduciary duty or violated an
7:36 22 investment objective?
7:36 23 **A. I am not aware of that, no.**
7:36 24 Q. Were there any disputes at all between
7:36 25 any -- between Staro and any of the limited partners

Page 30

7:42 1 Just a second.
7:42 2 MS. PATRICK: I don't know what the
7:42 3 next number is.
7:42 4 THE REPORTER: 137.
7:42 5 MS. PATRICK: Okay.
7:42 6 THE REPORTER: I've got some labels
7:42 7 already made out.
7:42 8 MS. PATRICK: Have you got stick-ums?
7:42 9 Thanks. If you -- I'm used to marking. Is that
7:42 10 okay with you?
7:42 11 THE REPORTER: That's fine.
7:42 12 (Deposition Exhibit 137 was marked.)
7:42 13 MS. PATRICK: I'll pass those around.
7:42 14 Q. (BY MS. PATRICK) Mr. Bobbs, I'm showing
7:42 15 you a copy of Exhibit 137. Have you seen this
7:42 16 document before?
7:42 17 **A. Yes, I have.**
7:42 18 Q. What is it, please?
7:42 19 **A. It's an offering memorandum for zero coupon**
7:42 20 **bonds to be issued by Enron Corp.**
7:43 21 Q. Okay. Are these the notes that you
7:43 22 purchased in the 144A?
7:43 23 **A. I believe they are, yes.**
7:43 24 Q. Okay. Did you review a copy of this
7:43 25 offering memorandum before you made the purchase of

Page 31

7:43 1 the notes?
7:43 2 **A. Yes.**
7:43 3 Q. Did you read it from cover to cover?
7:43 4 **A. No, because in this document, the financial**
7:43 5 **statements that I typically want to see are only**
7:43 6 **incorporated in here by reference.**
7:43 7 Q. Okay.
7:43 8 **A. There are others that probably would have**
7:43 9 **reviewed this in much more detail than I regarding**
7:43 10 **the exact terms of these zero coupon bonds and such.**
7:43 11 Q. Who would those people have been?
7:43 12 **A. They would have been other traders that are**
7:43 13 **responsible for the day-to-day trading, as opposed**
7:43 14 **to the analysis of the underlying company.**
7:43 15 Q. So you didn't find the offering memorandum
7:43 16 helpful in analyzing the underlying company?
7:43 17 **A. Oh, no. I found it helpful, but it's not**
7:43 18 **close to being everything that I would need in order**
7:44 19 **to analyze the company.**
7:44 20 Q. But the offering memorandum, combined with
7:44 21 the financials, would give you the complete picture?
7:44 22 Is that what you're saying?
7:44 23 **A. That is correct.**
7:44 24 Q. Okay. And did you feel that you had that
7:44 25 complete picture before you -- did you recommend

Page 32

7:44 1 purchasing the zero coupon convertibles?
7:44 2 **A. Well, it's a team approach where I work,**
7:44 3 **and together we come up with our own -- I was asked**
7:44 4 **to opine upon the underlying financial strength or**
7:44 5 **financial health of the company. I did not provide**
7:44 6 **opinions on whether the security was appropriately**
7:44 7 **priced or anything like that or the terms were**
7:44 8 **correct or anything of that nature.**
7:44 9 Q. Okay. This offering memorandum is dated
7:44 10 January 31st, 2001?
7:45 11 **A. Uh-huh.**
7:45 12 Q. Did you have the 10-K for 1999 available to
7:45 13 you at the time?
7:45 14 **A. I believe so, yes.**
7:45 15 Q. Okay. And did you, shortly after you began
7:45 16 to purchase these notes, have available to you the
7:45 17 2000 10-K?
7:45 18 **A. As I said earlier, I don't recall exactly**
7:45 19 **when the 2000 10-K was made available. They are --**
7:45 20 **usually become available, for most calendar year**
7:45 21 **companies, in late March and April. Sometimes it's**
7:45 22 **not until May, but -- so I don't recall exactly when**
7:45 23 **the 2000 10-K was made available for Enron.**
7:45 24 Q. Did you read the footnotes to the Enron
7:45 25 financial statements?

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7:45 1 **A. Absolutely.**
7:45 2 Q. Why did you do that?
7:45 3 **A. Well, as -- that's a normal a practice for**
7:45 4 **any company that we're analyzing because the**
7:45 5 **footnotes are very important in determining how one**
7:45 6 **should be interpreting the financial statements.**
7:46 7 Q. Did you understand from reading the
7:46 8 footnotes that Enron had a significant trading
7:46 9 business that they called their wholesale business?
7:46 10 **A. Yes. I was aware that they had that**
7:46 11 **business, yeah.**
7:46 12 Q. And were you aware that that business was
7:46 13 largely a mark-to-market business in terms of its
7:46 14 earnings?
7:46 15 **A. I understood there were certain elements**
7:46 16 **that were -- that involved mark-to-market, yes.**
7:46 17 Q. And, in fact, that a significant portion of
7:46 18 the wholesale revenues were from mark-to-market
7:46 19 transactions?
7:46 20 **A. I don't recall whether I -- to what extent**
7:46 21 **that business was based upon mark-to-market. I knew**
7:46 22 **that there were certainly elements of mark-to-market**
7:46 23 **issues in that part of the business, but I don't**
7:46 24 **recall whether it was -- I remember it being a**
7:46 25 **division of the company and that there were**

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7:52 1 **mean by -- I don't know what -- what you mean by**
7:52 2 **significant.**
7:52 3 Q. Fair point. Give me an example of one of
7:52 4 Enron's merchant power projects that you were aware
7:52 5 of.
7:52 6 **A. Wow. I don't remember specific names of**
7:52 7 **what they would call some of these -- what they**
7:52 8 **would -- how they would refer or what the names of**
7:52 9 **these specific power projects were. I remember**
7:52 10 **there being Marlin, Osprey, Raptor I through IV, a**
7:52 11 **lot of LJM 1 and 2 types of things, but specific**
7:52 12 **projects, I don't --**
7:52 13 Q. Okay. So you were aware when you made the
7:52 14 investment of those affiliates that you've just
7:52 15 described?
7:52 16 **A. I -- I was not aware of -- of many of them**
7:53 17 **at the time that we were making these investments,**
7:53 18 **no.**
7:53 19 Q. Is that right? Were you aware --
7:53 20 **A. Some of them I don't even know that were --**
7:53 21 **I know -- some of them I don't -- I'm not sure were**
7:53 22 **even formed at the time that we made some of these**
7:53 23 **initial investments.**
7:53 24 Q. How about Marlin and Osprey? You knew
7:53 25 about those?

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7:53 1 **A. Vaguely, yes.**
7:53 2 Q. Okay. And did you generally understand
7:53 3 that Enron had nonrecourse project debt?
7:53 4 **A. Yes.**
7:53 5 Q. Okay. What was significant to you about
7:53 6 the fact that Enron had nonrecourse project debt?
7:53 7 **A. Ask me again.**
7:53 8 Q. What was significant to you about the fact
7:53 9 that Enron had nonrecourse project debt?
7:53 10 MS. SAVETT: Objection as to form.
7:53 11 You haven't established whether it was significant
7:53 12 to him or not.
7:53 13 MS. PATRICK: Well, he's -- seems to
7:53 14 be able to tell me that.
7:54 15 **A. Well, I can tell you in general terms what**
7:54 16 **I'm looking -- when we're -- when I specifically am**
7:54 17 **looking at companies that have nonrecourse project**
7:54 18 **financing, the fact that it's nonrecourse is -- is a**
7:54 19 **very notable and significant thing.**
7:54 20 **Because if something were to happen to**
7:54 21 **that project or, for some reason, the economics of**
7:54 22 **that project wasn't -- didn't pan out to -- to be**
7:54 23 **the original basis from which that project decision**
7:54 24 **was made, the company that has the equity in that**
7:54 25 **project can, you know, walk away from the project**

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7:54 1 **and the debt. The keys to that project, if you**
7:54 2 **will, are just handed to the people that lent that**
7:54 3 **nonrecourse financing.**
7:54 4 Q. (BY MS. PATRICK) All right.
7:54 5 **A. It doesn't -- doesn't -- while it -- while**
7:54 6 **the company will forego any potential equity**
7:55 7 **appreciation associated with that -- from that**
7:55 8 **project, they will not, though, incur the**
7:55 9 **liabilities on that project because it's nonrecourse**
7:55 10 **to them.**
7:55 11 Q. So from your perspective as a -- as a -- an
7:55 12 investor, having project debt financed off balance
7:55 13 sheet and nonrecourse is a plus?
7:55 14 **A. In most cases, I think that's true.**
7:55 15 Q. Okay. And you were aware that Enron used
7:55 16 off-balance-sheet financing for its project finance
7:55 17 activities at the time you made the investment?
7:55 18 **A. That was nonrecourse, yes.**
7:55 19 Q. Yes. And did you -- were you aware of that
7:55 20 from reading the 10-K and the -- and the -- how did
7:55 21 you learn that?
7:55 22 **A. It was either from the 10-K or the 10-Qs**
7:55 23 **that I had, or it could have been gaining it from**
7:56 24 **analysts' reports and going back to the 10-K.**
7:56 25 **I remember -- I -- I specifically**

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7:56 1 **recall, though, being -- having to do additional**
7:56 2 **work or trying to do additional work about some of**
7:56 3 **these off-balance-sheet types of things. I remember**
7:56 4 **there being the -- I remember having questions after**
7:56 5 **reading the disclosure.**
7:56 6 Q. Okay. And put that in time for me, sir.
7:56 7 Was that in the time when you were doing the 144A
7:56 8 investment?
7:56 9 **A. That was in or around before -- maybe**
7:56 10 **possibly during the initial -- I remember it being a**
7:56 11 **lot of work to try to figure -- to really fully**
7:56 12 **understand these things, yes.**
7:56 13 Q. All right. But is it fair to say that
7:56 14 having done that work, you felt that you fully
7:56 15 understood it?
7:57 16 **A. I felt that I understood it enough to be**
7:57 17 **reasonably confident in my opinions being provided**
7:57 18 **to our team, yes.**
7:57 19 Q. And when you did that work, sir, what did
7:57 20 you use? Did you just spend more time in the 10-K
7:57 21 and the footnotes to try to understand the
7:57 22 transactions?
7:57 23 **A. That, combined with searching -- I remember**
7:57 24 **searching for other fixed income reports on Enron**
7:57 25 **from the investment-grade fixed income community. I**

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8:04 1 **A. At the time, it was either Robert Prellwitz**
8:04 2 **or Robert Barnard.**
8:04 3 Q. Can you spell the last names, please?
8:04 4 **A. Robert Prellwitz is P-r-e-l-l-w-i-t-z.**
8:04 5 Q. Uh-huh.
8:04 6 **A. And Barnard is B-a-r-n-a-r-d.**
8:04 7 Q. Are they still with Stark?
8:04 8 **A. Yes, they are.**
8:04 9 Q. Do you -- the Exhibit A-1 to the 144A
8:04 10 memorandum contemplates the completion of a security
8:04 11 holder questionnaire. Do you know who would have
8:04 12 completed that or if it was completed?
8:04 13 **A. I don't know who or if it was completed. I**
8:04 14 **don't know who would have completed it or if it was**
8:04 15 **completed.**
8:04 16 Q. Is it generally the case that having
8:04 17 registered securities makes them more liquid than
8:04 18 having 144A private placements?
8:04 19 **A. Generally, that is a true statement.**
8:05 20 Q. And if it doesn't cost you anything to
8:05 21 register your securities, can you think of a reason
8:05 22 why you wouldn't?
8:05 23 **A. Not off the top of my head, no.**
8:05 24 Q. Do you think it's most likely that the
8:05 25 Staro-managed funds did, in fact, convert their

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8:05 1 144As to public securities and sell them in the
8:05 2 registration statement?
8:05 3 **A. One more time. Ask me again.**
8:05 4 Q. Having worked at Stark --
8:05 5 **A. Uh-huh.**
8:05 6 Q. -- do you think it's more likely than not
8:05 7 that, in fact, you did convert and sell at least
8:05 8 some of the registration?
8:05 9 MS. SAVETT: Objection as to form.
8:05 10 You're asking him to speculate. Ask him if he knows
8:05 11 or not.
8:05 12 MS. PATRICK: No. I'm sticking with
8:05 13 my question.
8:05 14 MS. SAVETT: Okay. Well, I'm sticking
8:05 15 to my objection.
8:05 16 **A. I just don't know in this case.**
8:05 17 Q. (BY MS. PATRICK) Can you think of an
8:05 18 instance -- have you -- has it ever been the case,
8:06 19 in your experience, that Staro-managed funds had the
8:06 20 right to register and chose not to?
8:06 21 **A. No. I cannot think of a case where we had**
8:06 22 **the right to register and purposely chose not to.**
8:06 23 MS. PATRICK: Counsel, can you just
8:06 24 tell us, did they sell in the registration
8:06 25 statement? Did they sell?

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8:06 1 MR. STOCK: We'll try to get an answer
8:06 2 for you on that.
8:06 3 MS. PATRICK: Huh?
8:06 4 MR. STOCK: We will try to get an
8:06 5 answer for you on that.
8:06 6 MS. PATRICK: Okay. It's relatively
8:06 7 important.
8:06 8 Q. (BY MS. PATRICK) Did -- did anybody, in
8:06 9 searching for documents, ask you whether the
8:06 10 security holder questionnaire had been completed?
8:06 11 **A. No one ever asked me, no.**
8:06 12 Q. You were aware when you were doing your
8:06 13 analysis on this that this was a private placement
8:06 14 that had registration rights?
8:06 15 **A. I was aware of that.**
8:06 16 Q. Okay. Did that come up at all in searching
8:06 17 for the documents?
8:06 18 **A. With respect to what I was being asked to**
8:07 19 **search for and look for, no.**
8:07 20 Q. Okay. When you -- going back for a moment
8:07 21 to your analysis, you said you talked to some
8:07 22 people. Did you speak to anyone at Enron?
8:07 23 **A. I -- I know over the -- in the past I have**
8:07 24 **had conversations with folks in the investor**
8:07 25 **relations area of Enron. I don't know their names,**

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8:07 1 **and I don't -- I don't recall their names, and I**
8:07 2 **don't recall the exact timing at which I had**
8:07 3 **conversations. But, yes, I would have had contact**
8:07 4 **with someone in the investor relations area.**
8:07 5 Q. Do you know who the directors of Enron
8:07 6 were?
8:07 7 **A. I don't know all -- all of them or -- no, I**
8:07 8 **don't know that many of them.**
8:07 9 Q. Okay. Did you ever speak to any Enron
8:07 10 director in connection with making your investment
8:07 11 decision here?
8:08 12 **A. No.**
8:08 13 Q. Any of them?
8:08 14 **A. No.**
8:08 15 Q. Did you ever get a written representation
8:08 16 from any Enron director?
8:08 17 **A. No, I did not.**
8:08 18 Q. Did you ever speak to Jeffrey Skilling?
8:08 19 **A. No, I did not.**
8:08 20 Q. Kenneth Lay?
8:08 21 **A. No.**
8:08 22 Q. Andrew Fastow?
8:08 23 **A. No.**
8:08 24 Q. Richard Causey?
8:08 25 **A. No.**

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8:14 1 reasonable for them to rely on auditors -- for
8:14 2 directors to rely on auditors when auditors tell
8:14 3 them their financial statements are fairly
8:14 4 presented?
8:14 5 MS. SAVETT: Objection as to form.
8:14 6 You can try to answer if you understand the
8:14 7 question.
8:14 8 **A. Yeah. I -- I mean, generally speaking, I**
8:15 9 **think it's reasonable if an auditor tells you these**
8:15 10 **financial statements fairly represent and were**
8:15 11 **prepared with -- in accordance with generally**
8:15 12 **accepted accounting principles, that you should be**
8:15 13 **able to assume that they -- that -- that that is**
8:15 14 **correct.**
8:15 15 **But, again, I mean, that's not, okay,**
8:15 16 **fine, let's -- let's see -- let's -- we should be**
8:15 17 **looking at other things just besides what our**
8:15 18 **auditors are doing.**
8:15 19 Q. (BY MS. PATRICK) Do you have any evidence
8:15 20 that the directors did not look at other things?
8:15 21 You don't know what the directors did, do you?
8:15 22 MS. SAVETT: Excuse me. What -- you
8:15 23 asked two questions. What's your question?
8:15 24 MS. PATRICK: My question is what
8:15 25 it is.

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8:15 1 MS. SAVETT: I object to the form of
8:15 2 the --
8:15 3 MS. PATRICK: That's fine.
8:15 4 MS. SAVETT: -- multiple question
8:15 5 and --
8:15 6 MS. PATRICK: That's fine. State your
8:15 7 objection.
8:15 8 MS. SAVETT: -- there were two
8:15 9 completely different questions.
8:15 10 MS. PATRICK: State your objection.
8:15 11 Objection, form, is that your objection?
8:15 12 MS. SAVETT: Yeah.
8:15 13 MS. PATRICK: Okay. Read my question
8:15 14 back, please.
8:15 15 MS. SAVETT: Both of them.
8:15 16 **A. You'll have to repeat it.**
8:15 17 Q. (BY MS. PATRICK) All right. Let me repeat
8:15 18 it. You don't know what else the directors relied
8:16 19 on, do you?
8:16 20 **A. No, I do not.**
8:16 21 Q. And you don't know whether they were
8:16 22 unreasonable in relying on that, do you?
8:16 23 **A. Well, not having the knowledge of what else**
8:16 24 **they relied upon, no.**
8:16 25 Q. Okay. So you don't actually have any basis

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8:16 1 upon which to testify to what the directors did or
8:16 2 didn't do or whether they acted with diligence or
8:16 3 not --
8:16 4 MS. SAVETT: Objection --
8:16 5 Q. (BY MS. PATRICK) -- because you don't know
8:16 6 what they did, right?
8:16 7 MS. SAVETT: Objection. He already
8:16 8 stated one bases, which is that he knew --
8:16 9 MS. PATRICK: Excuse me. If you're
8:16 10 going to testify, we're going to call Judge Harmon
8:16 11 and talk about it.
8:16 12 MS. SAVETT: Wait. Your -- your
8:16 13 question was misleading.
8:16 14 MS. PATRICK: Please, stop. You know
8:16 15 the rules. Objection. Form. Read my question
8:16 16 back, please.
8:16 17 **A. Again, you'll have to repeat it.**
8:16 18 Q. (BY MS. PATRICK) She -- she can read it
8:16 19 back.
8:16 20 (Requested text read.)
8:16 21 MS. SAVETT: Objection.
8:17 22 **A. Yeah. I have no physical evidence as to**
8:17 23 **what they did.**
8:17 24 Q. (BY MS. PATRICK) Okay. All right. Same
8:17 25 question with regard to Alliance Capital Management.

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8:17 1 You don't have any idea what Alliance did or didn't
8:17 2 know at the time these notes were offered?
8:17 3 **A. Well, I mean, they -- I believe it was the**
8:17 4 **chairman of Alliance Capital, who's a director of**
8:17 5 **Enron, signed the registration statement and,**
8:17 6 **therefore, claimed to know that these -- everything**
8:17 7 **in this document was accurate and fully represented**
8:17 8 **the financial health of -- of the company, and there**
8:18 9 **was no material misrepresentations or -- contained**
8:18 10 **in there, and, in fact, there was.**
8:18 11 Q. Well, the financials were ultimately
8:18 12 restated, right?
8:18 13 **A. Yes, they were.**
8:18 14 Q. Okay. But at the time that signature was
8:18 15 affixed, we've already established you don't know
8:18 16 what the directors of Enron actually knew about the
8:18 17 financials?
8:18 18 MS. SAVETT: Objection as to form.
8:18 19 **A. Look, I only know what they should have**
8:18 20 **known, and they clearly didn't know what they should**
8:18 21 **have known.**
8:18 22 Q. (BY MS. PATRICK) Right. But you don't
8:18 23 know whether they were diligent and people lied to
8:18 24 them or anything else. You don't know what they
8:18 25 did, true?

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8:26 1 **status would not know about. It just doesn't make**
8:26 2 **any sense to me.**
8:26 3 Q. You also sued Mr. Lay, Mr. Skilling and
8:26 4 Mr. Fastow; is that right?
8:26 5 **A. That is correct.**
8:26 6 Q. Tell me why you did that.
8:26 7 **A. Well, I know that they were the senior**
8:26 8 **executives of Enron Corp. But, specifically, why**
8:26 9 **those three or why only those three or whatever,**
8:26 10 **that's the discussion that -- among the attorneys.**
8:26 11 Q. Did you think you had sued the right people
8:26 12 when you filed this lawsuit?
8:26 13 **A. I believe that, yes.**
8:26 14 Q. And you're fiduciaries for your partners,
8:26 15 right?
8:26 16 **A. I'm sorry?**
8:26 17 Q. Staro is a fiduciary for its partners? You
8:26 18 have to act in their best interest?
8:27 19 **A. That is correct.**
8:27 20 Q. And in order to protect their interest,
8:27 21 Staro, when it filed the lawsuit, sued the people it
8:27 22 thought were appropriate to sue, right?
8:27 23 **A. I'm assuming so, yes.**
8:27 24 Q. Okay. Well, do you have any doubt about
8:27 25 that?

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8:27 1 **A. No.**
8:27 2 Q. Did you leave someone out that you meant to
8:27 3 sue in this lawsuit?
8:27 4 **A. I don't believe so, no.**
8:27 5 Q. Okay. So you were satisfied that the
8:27 6 original complaint that you filed three weeks after
8:27 7 Enron's bankruptcy was an appropriate complaint and
8:27 8 sued the right people for the injuries that your
8:27 9 funds had suffered?
8:27 10 **A. At the time, I believe that's true.**
8:27 11 Q. You did not sue any Enron director other
8:27 12 than Kenneth Lay and Jeffrey Skilling; isn't that
8:27 13 right?
8:27 14 **A. We did not name them in this document, no.**
8:28 15 Q. Okay. You didn't name a single investment
8:28 16 bank in this document, did you?
8:28 17 **A. They're not named, no.**
8:28 18 Q. You didn't name Alliance Capital Management
8:28 19 in this document, did you?
8:28 20 **A. No.**
8:28 21 Q. You also did not assert in this lawsuit
8:28 22 that you filed on your own behalf any claim under
8:28 23 Section 11. Do you remember that?
8:28 24 **A. Ask me one more time.**
8:28 25 Q. When you filed this lawsuit in December of

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8:28 1 2001, were you aware of the allegations you were
8:28 2 making?
8:28 3 **A. I'm generally aware of the allegations made**
8:28 4 **in this document, yes.**
8:29 5 Q. Including the fact that it asserts a claim
8:29 6 under Section 10 of the Exchange Act --
8:29 7 **A. Uh-huh.**
8:29 8 Q. -- for fraud --
8:29 9 **A. Uh-huh.**
8:29 10 Q. -- in connection with the sale of Enron
8:29 11 bonds. Are you aware of that?
8:29 12 **A. Yes.**
8:29 13 Q. Okay. Are you aware that that was the only
8:29 14 claim you asserted in that lawsuit?
8:29 15 **A. I'm not that knowledgeable in the exact**
8:29 16 **details of -- I'm not an attorney, and I don't know**
8:29 17 **the exact details of what type of claim is in here,**
8:29 18 **but I'm generally familiar with -- with the lawsuit,**
8:29 19 **yes.**
8:29 20 Q. Okay. You're familiar with the lawsuit but
8:29 21 can't tell me what claims you asserted?
8:29 22 **A. I'm -- I know that we asserted the claim**
8:30 23 **that you mentioned. I'm not sure if that's the only**
8:30 24 **claim or that's the entirety of the claim.**
8:30 25 Q. Do you know why a claim under Section 11

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8:30 1 wasn't asserted?
8:30 2 **A. That -- that was -- that's something that**
8:30 3 **was discussed among the attorneys.**
8:30 4 Q. Are you also represented by Milberg, Weiss?
8:30 5 **A. We are in the -- you know, the bigger**
8:30 6 **claim.**
8:30 7 Q. What bigger claim?
8:30 8 **A. The -- the fraud case.**
8:30 9 Q. What fraud case, sir?
8:30 10 **A. When you say what fraud -- I mean --**
8:30 11 Q. Are you talking about Enron?
8:30 12 **A. Yes.**
8:31 13 Q. Are you talking about a claim on the stock
8:31 14 or the bonds or what?
8:31 15 **A. No. I'm talking about the general claim**
8:31 16 **that's representing all the security holders.**
8:31 17 **That's -- Milberg, Weiss is representing all the**
8:31 18 **security holders in the overall fraud claim that's**
8:31 19 **been filed here.**
8:31 20 Q. Are you aware that the fraud claim was
8:31 21 dismissed against the directors?
8:31 22 MS. SAVETT: Objection as to form.
8:31 23 Q. (BY MS. PATRICK) Sir?
8:31 24 **A. Ask me the question again.**
8:31 25 Q. Are you aware that the fraud claim was

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8:36 1 tell me specific positions because you have an
8:36 2 overall strategy that involves both bonds -- the
8:36 3 purchase and sale of bonds and equity
8:36 4 simultaneously, as part of a unified strategy?
8:36 5 **A. That is correct.**
8:36 6 Q. All right. So you don't just buy equity to
8:36 7 buy it. You buy it as part of an overall arbitrage
8:36 8 strategy, right?
8:36 9 **A. No. There are certain investment**
8:36 10 **strategies at our firm where we will buy equity for**
8:37 11 **the sake of buying the equity.**
8:37 12 Q. All right. As pertains to Enron, though --
8:37 13 **A. Okay.**
8:37 14 Q. -- you did not buy equity just for the sake
8:37 15 of buying equity. You bought it as part of an
8:37 16 arbitrage strategy?
8:37 17 **A. I believe that's correct, yes.**
8:37 18 Q. Okay. And the same thing with the
8:37 19 convertible bonds. You didn't buy those bonds just
8:37 20 to buy the bonds. You bought them as part of an
8:37 21 arbitrage strategy?
8:37 22 **A. Generally, I believe that that would be a**
8:37 23 **correct statement.**
8:37 24 Q. And the same with regard to your short
8:37 25 selling of Enron stock. You didn't do that just to

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8:37 1 short sell Enron stock. It was part of an overall
8:37 2 strategy?
8:37 3 **A. Correct.**
8:37 4 Q. Okay. Since you are in the risk arbitrage
8:37 5 and convertible hedging arena, did you have a
8:37 6 perception of what proportion of the purchasers of
8:37 7 the Enron zero coupon convertible notes were engaged,
8:38 8 in arbitrage strategies like yours?
8:38 9 **A. I do not know that, no.**
8:38 10 Q. Did you have a sense of it?
8:38 11 **A. Did not.**
8:38 12 Q. Okay. Certainly companies like CS First
8:38 13 Boston put out weekly arbitrage recommendations with
8:38 14 regard to the Enron zero coupons, right?
8:38 15 **A. I don't know that they did or they did not.**
8:38 16 Q. You never looked at arbitrage -- risk
8:38 17 arbitrage recommendations from CS First Boston with
8:38 18 regard to Enron?
8:38 19 **A. Personally, no.**
8:38 20 Q. You did not. But the risk arbitrage
8:38 21 trading arena is -- is a significant portion of the
8:38 22 overall securities market. Do you agree?
8:38 23 **A. Well, keep in mind that risk arbitrage**
8:38 24 **wasn't the original strategy that was being employed**
8:38 25 **when these bonds were being purchased.**

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8:39 1 Q. What was the original strategy?
8:39 2 **A. Convertible arbitrage.**
8:39 3 Q. Okay.
8:39 4 **A. Risk arbitrage is when -- typically, it's**
8:39 5 **sometimes called merger arbitrage. It typically**
8:39 6 **occurs when one company is buying another company.**
8:39 7 **That was not the case here, where we were -- when we**
8:39 8 **had suffered substantial damages as a result of this**
8:39 9 **case, the result of this fraud or misrepresentation.**
8:39 10 Q. Okay. We're going to come to that, but
8:39 11 just tell me, when was the convertible -- you called
8:39 12 it convertible arbitrage?
8:39 13 **A. Yes.**
8:39 14 Q. What is convertible arbitrage, sir?
8:39 15 **A. It's a hard thing to -- to describe, but,**
8:39 16 **generally speaking, it involves the combination of**
8:39 17 **investments involving convertible bonds and**
8:39 18 **equities.**
8:39 19 Q. How does it involve them?
8:39 20 **A. You're typically buying one and selling**
8:40 21 **another and trying to arbitrage the pricing**
8:40 22 **inefficiencies that exist.**
8:40 23 Q. Buying the bonds and selling the equity
8:40 24 short?
8:40 25 **A. Is one way, yes.**

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8:40 1 Q. That's what you did here?
8:40 2 **A. That is correct.**
8:40 3 Q. For how long did you pursue a convertible
8:40 4 arbitrage strategy with regard to Enron?
8:40 5 **A. We were pursuing it, for the most part,**
8:40 6 **since the zero coupon bonds were issued in early**
8:40 7 **2001.**
8:40 8 Q. When did you stop?
8:40 9 **A. I'm not sure exactly, but it was shortly**
8:40 10 **toward the end of 2001, before Enron -- shortly**
8:40 11 **before Enron filed for bankruptcy protection.**
8:40 12 Q. Were you still doing convertible arbitrage
8:40 13 after the Dynegy merger was announced, or did you
8:40 14 change strategies at that point?
8:40 15 **A. For the most part, the convertible**
8:41 16 **arbitrage strategy was beginning to end right in and**
8:41 17 **around the -- the Dynegy thing, as I recall, yes.**
8:41 18 Q. And following the announcement of the
8:41 19 Dynegy merger, you did risk arbitrage?
8:41 20 **A. We did not pursue a risk arbitrage strategy**
8:41 21 **with respect to Enron or Dynegy or any combination**
8:41 22 **of those two companies.**
8:41 23 Q. You did not?
8:41 24 **A. We did not.**
8:41 25 Q. But you made purchases of Dynegy securities

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9:02 1 **A. There's no doubt in my mind that we have**
9:02 2 **documents related to that litigation.**
9:02 3 Q. How about Global Crossing? When was that
9:02 4 case filed?
9:02 5 **A. I'm not sure of the exact dates of the**
9:03 6 **Global Crossing case.**
9:03 7 Q. Can you give me a year?
9:03 8 **A. I believe that Global Crossing case was**
9:03 9 **filed after I started working for Stark, but other**
9:03 10 **than -- I can't be any more specific than that.**
9:03 11 Q. Before or after Enron?
9:03 12 **A. Not -- not sure.**
9:03 13 Q. How about Sepracor, before or after Enron?
9:03 14 **A. Not sure.**
9:03 15 Q. Do you know where Global Crossing was
9:03 16 filed?
9:03 17 **A. Where the case was filed, no, I do not**
9:03 18 **know that.**
9:03 19 Q. Do you know what the claim was there?
9:03 20 **A. Precisely, no.**
9:03 21 Q. Generally?
9:03 22 **A. I do not know.**
9:04 23 Q. How about -- did -- did Berger & Montague
9:04 24 handle both of those cases for you?
9:04 25 **A. Yes.**

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9:04 1 Q. How about Iowa Beef Processors? That was a
9:04 2 Quarels & Brady case, you said?
9:04 3 **A. Tyson, IBP, yes, is Quarels & Brady, yes.**
9:04 4 Q. Were you the lead plaintiff in that case?
9:04 5 **A. I'm not -- I'm not exactly sure.**
9:04 6 THE VIDEOGRAPHER: Excuse me,
9:04 7 Mr. Bobbs. I'm getting cord noise from your hand.
9:04 8 THE WITNESS: Oh, sorry.
9:04 9 Q. (BY MS. PATRICK) This is just like having
9:04 10 an EKG. You've got to be very still.
9:04 11 **A. That's okay.**
9:04 12 Q. Did you seek to be appointed -- I'm sorry.
9:04 13 I might have asked you this. Did you seek to be
9:04 14 appointed as lead plaintiff or class representative
9:04 15 in Global Crossing?
9:04 16 **A. I believe we -- we were seeking to be a**
9:04 17 **class representative in Global Crossing as well.**
9:04 18 Q. And in Iowa Beef/Tyson's, you sought to be
9:05 19 a class representative?
9:05 20 **A. Yes. I believe that's true.**
9:05 21 Q. Was that before or after Enron?
9:05 22 **A. To the best of my knowledge, I believe**
9:05 23 **Tyson was before Enron.**
9:05 24 Q. Did you work on Tyson?
9:05 25 **A. I did not.**

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9:05 1 Q. Did you work on Global Crossing?
9:05 2 **A. What aspects do you mean, did I work on**
9:05 3 **Global Crossing?**
9:05 4 Q. Did you work on the investment strategy for
9:05 5 Global Crossing?
9:05 6 **A. I was part of a team, but I was not in the**
9:05 7 **integral part of that team.**
9:05 8 Q. What other involvement did you have with
9:05 9 Global Crossing, sir?
9:05 10 **A. My involvement with Global Crossing was**
9:05 11 **more in the role of -- of what I do for Stark, which**
9:06 12 **is as an investment analyst of the company.**
9:06 13 Q. Okay. How about AOL? Where is that case
9:06 14 pending?
9:06 15 **A. Where the case is pending, I don't know.**
9:06 16 Q. When was it filed?
9:06 17 **A. Not exactly sure.**
9:06 18 Q. Before or after Enron?
9:06 19 **A. Again, I'm not exactly sure.**
9:06 20 **(Deposition Exhibit 139 was marked.)**
9:06 21 Q. (BY MS. PATRICK) Are you aware that, as
9:06 22 part of seeking to serve as lead plaintiff in the
9:06 23 Enron case, Staro had to file a certificate? Are
9:06 24 you aware of that?
9:06 25 **A. I'm -- I'm not aware of the procedures**

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9:06 1 **necessary to become the lead plaintiff.**
9:07 2 Q. You're not. Do you know what it involves
9:07 3 to be a lead plaintiff?
9:07 4 **A. Yes.**
9:07 5 Q. What does it involve?
9:07 6 **A. Well, you -- my understanding is it's much**
9:07 7 **like being a class representative, where you have to**
9:07 8 **be generally familiar with what's going on and agree**
9:07 9 **to produce documents; agree to make yourself**
9:07 10 **available for depositions; be generally available to**
9:07 11 **attend the trial, if necessary; be under the**
9:07 12 **understanding that you're representing a class, not**
9:07 13 **just, you know, yourself. And that's my --**
9:07 14 Q. Okay.
9:07 15 **A. -- basic understanding.**
9:07 16 Q. All right. Have a look at Exhibit 139,
9:08 17 please. Have you seen that before?
9:08 18 **A. I've seen this before, yes.**
9:08 19 Q. What is it, please?
9:08 20 **A. I believe it's a document saying that we're**
9:08 21 **willing to be a -- or asking to be a class**
9:09 22 **representative. I don't know of the legal term or**
9:09 23 **the legal -- legalese involved in that.**
9:09 24 Q. Who is Colin Lancaster?
9:09 25 **A. He's the general counsel of the company.**

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9:14 1 A. I believe that's true.
9:14 2 Q. Same for the six and three-quarter notes?
9:14 3 A. Correct.
9:14 4 Q. Do you know why it is, therefore, that
9:14 5 Staro Asset Management, LLC, is the plaintiff, as
9:14 6 opposed to the funds?
9:14 7 A. I -- I don't know for sure. That's more of
9:14 8 a legal question that I'm not intelligent enough to
9:14 9 answer. I mean, I'm not an attorney. I just don't
9:15 10 know.
9:15 11 Q. Right. I just have to ask you the
9:15 12 question. For some of these, I understand perfectly
9:15 13 well that your answer's going to be I don't
9:15 14 know. I'm not meaning to press you. I just need to
9:15 15 bound -- so that you understand what I'm doing, part
9:15 16 of what I'm doing --
9:15 17 A. Uh-huh
9:15 18 Q. -- is trying to figure out if I need to
9:15 19 talk to somebody else. That's all.
9:15 20 A. Sure.
9:15 21 Q. Does Staro Asset Management --
9:15 22 A. By the way, I think I need to correct
9:15 23 something that I mentioned earlier, after I was
9:15 24 thinking about it on the break, is that Staro Asset
9:15 25 Management, LLC, is not a registered investment

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9:15 1 advisor. We are exempt, so --
9:15 2 Q. You're exempt because your clients are
9:15 3 foreign?
9:15 4 A. I'm not exactly sure the issues as to why
9:15 5 we're exempt or not, but I -- I did recall that on
9:15 6 the break, and I just wanted to correct something
9:15 7 that I thought -- I mentioned earlier that I believe
9:15 8 we were. In fact, we are not a registered
9:15 9 investment advisor.
9:15 10 Q. Is Stark?
9:15 11 A. Just to complete, Stark what?
9:16 12 Q. Stark Investments, LP.
9:16 13 A. I don't believe any entity at Stark,
9:16 14 generally speaking, is a registered investment
9:16 15 advisor. We are all exempt. All the entities are
9:16 16 exempt.
9:16 17 Q. And is that because, by and large --
9:16 18 without regard to the technical reason, is it your
9:16 19 understanding, having worked at Stark, that most of
9:16 20 the investors in your funds are foreign entities or
9:16 21 individuals?
9:16 22 A. I don't know, but I don't believe that is
9:16 23 correct. But I don't know.
9:16 24 Q. Okay.
9:16 25 A. I don't know why -- the answer to why we

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9:16 1 are -- most of -- why all of our entities are
9:16 2 exempt. I don't know the answer to that.
9:16 3 Q. Do you know why the funds are domiciled in
9:16 4 Bermuda?
9:16 5 A. I do not know.
9:16 6 Q. Do you know whether there are legal
9:16 7 restrictions that preclude you from soliciting U.S.
9:16 8 residents to invest in your funds?
9:17 9 A. I don't think unless you're -- my thought
9:17 10 is that I don't -- unless you're a registered
9:17 11 investment advisor, I -- I don't think you're
9:17 12 permitted, under securities laws, to market to the
9:17 13 general public.
9:17 14 Q. Can you tell me, sir, what the breakdown is
9:17 15 of investors in the Stark funds as between domestic
9:17 16 and foreign?
9:17 17 A. I can't -- I do not know and cannot say.
9:17 18 Q. Do you have that data at Stark, do you
9:17 19 believe?
9:17 20 A. I'm -- I'm highly confident someone at
9:17 21 Stark has that data.
9:17 22 Q. The Stark -- the Stark funds that purchased
9:17 23 Enron securities, are they partnerships?
9:17 24 A. Don't know.
9:18 25 Q. Well, you're an investor in the Stark

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9:18 1 Investors, LP, right?
9:18 2 A. Stark Investments Limited Partnership,
9:18 3 that's correct.
9:18 4 Q. That is a partnership?
9:18 5 A. Correct.
9:18 6 Q. Is there a written partnership agreement?
9:18 7 A. I believe there is.
9:18 8 Q. Is -- do you know what authority, if any,
9:18 9 it gives Staro Asset Management to file lawsuits on
9:18 10 behalf of the limited partnership?
9:18 11 A. Well, I believe that Staro Asset Management
9:18 12 is the general partner involved in those
9:18 13 partnerships.
9:18 14 Q. I understand. Do you know whether, as the
9:18 15 general partner, the partnership agreement gives it
9:18 16 the ability to file suit without the consent of the
9:18 17 limited partners?
9:18 18 A. I believe it does, but I'm not exactly
9:18 19 sure.
9:18 20 Q. Have you seen the partnership agreement?
9:18 21 A. I have not. I don't recall having seen
9:18 22 it, no.
9:19 23 Q. Did you sign the partnership agreement?
9:19 24 A. I believe I did.
9:19 25 Q. Do you know whether Staro Asset Management

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9:24 1 legal advice in making a judgment about what to
9:24 2 disclose to investors?
9:24 3 **A. I believe it's important to consider. I**
9:24 4 **don't believe it should be the only consideration.**
9:24 5 Q. But it is appropriate to consider legal
9:24 6 advice?
9:24 7 **A. I would think so, generally speaking, yeah.**
9:24 8 Q. When -- Staro sought to be appointed lead
9:24 9 plaintiff for a class of bond purchasers in the
9:24 10 Enron case, right, or class representative? I'm not
9:24 11 using a technical term.
9:24 12 **A. Okay.**
9:24 13 Q. Were you aware that Judge Harmon ruled that
9:24 14 you could not be the lead plaintiff in the case?
9:24 15 **A. I'm aware that we could not be the -- the**
9:25 16 **lead plaintiff in the -- the overall fraud claim. I**
9:25 17 **know that we are the class representative in the**
9:25 18 **Section 11 claim.**
9:25 19 Q. How did you learn that you were not allowed
9:25 20 to be the overall plaintiff in the fraud claim?
9:25 21 **A. I was advised by -- I'm not -- I don't**
9:25 22 **remember who exactly advised me. It was either our**
9:25 23 **in-house or our outside counsel.**
9:25 24 Q. The complaint that you filed was then
9:25 25 amended in the form of the bigger Newby complaint.

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9:25 1 Do you remember that?
9:25 2 **A. Yes.**
9:25 3 Q. And who filed the amended Newby complaint,
9:25 4 Milberg, Weiss?
9:25 5 **A. I don't remember who filed the amended**
9:25 6 **complaint. I don't --**
9:25 7 Q. Did you look at it before it was filed?
9:25 8 **A. That's -- the specific amendment, I**
9:26 9 **don't -- I don't recall looking at it. It was**
9:26 10 **something that our lawyers handled for the most**
9:26 11 **part.**
9:26 12 MS. PATRICK: Let's change the tape
9:26 13 for just a second. Let's go off the record.
9:26 14 THE VIDEOGRAPHER: We're are off the
9:26 15 record at 11:21 a.m.
9:26 16 (A recess was taken.)
9:27 17 BEGINNING OF TAPE NUMBER 3:
9:29 18 THE VIDEOGRAPHER: We are back on the
9:29 19 record at 11:24 a.m.
9:29 20 Q. (BY MS. PATRICK) We were on the subject of
9:29 21 the amended compliant?
9:29 22 **A. Uh-huh.**
9:29 23 Q. Do you know who drafted the amended
9:29 24 complaint?
9:29 25 **A. I believe it was Milberg, Weiss, but I'm**

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9:29 1 **not a hundred percent sure.**
9:29 2 Q. Did you review a copy of the amended
9:29 3 complaint before it was filed?
9:30 4 **A. Personally, no.**
9:30 5 Q. Do you know of your own knowledge whether
9:30 6 anyone at Staro did?
9:30 7 **A. I'm sure someone at Staro did.**
9:30 8 Q. Who?
9:30 9 **A. Either our general counsel or one of our**
9:30 10 **other attorneys, Dan, someone like that.**
9:30 11 Q. Did they tell you they did, or that's just
9:30 12 what you think would have been prudent?
9:30 13 **A. No. I can recall them saying they reviewed**
9:30 14 **it and it has been filed.**
9:30 15 Q. Do you know who made the decision to add
9:30 16 defendants to the Section 11 claim?
9:30 17 **A. That was a discussion among the attorneys.**
9:30 18 Q. You did not participate in that?
9:30 19 **A. No, I did not.**
9:30 20 Q. You were not asked to provide any facts to
9:30 21 support the filing of a claim different than the one
9:30 22 that had been filed originally by Staro?
9:30 23 **A. I was asked to provide facts, and I believe**
9:30 24 **I was asked to reiterate facts that I provided**
9:31 25 **earlier as the amended complaint was filed. Yes, I**

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9:31 1 **do.**
9:31 2 Q. Did you ever talk to anyone from Milberg,
9:31 3 Weiss about that?
9:31 4 **A. No, I did not.**
9:31 5 Q. Tell me the name of the attorney you talked
9:31 6 to in providing whatever facts you provided.
9:31 7 **A. Because they work so interchangeably, I**
9:31 8 **don't recall whether it was Colin or Dan McNally.**
9:31 9 Q. It would have been somebody in-house?
9:31 10 **A. Yes.**
9:31 11 Q. All right. That's all I need. You contend
9:31 12 in the complaint that there were facts
9:31 13 misrepresented in Enron's financial statements?
9:31 14 **A. Correct.**
9:31 15 MS. SAVETT: Excuse me. Which
9:31 16 complaint are you referring to?
9:31 17 MS. PATRICK: Doesn't matter. It's in
9:31 18 both of them.
9:31 19 MS. SAVETT: Okay. Well, just make
9:32 20 that clear so he knows that you're not referring to
9:32 21 the original one or -- I don't know which one you're
9:32 22 referring to. There are three complaints.
9:32 23 MS. PATRICK: Yes, there are.
9:32 24 MS. SAVETT: Could you be more
9:32 25 specific, please?

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9:40 1 second bullet point, December 1997 through 2000?
9:40 2 **A. Enron intends -- yes, I do see that.**
9:40 3 Q. And what does the last sentence say, sir?
9:40 4 **A. As a result, the previously issued**
9:40 5 **financial statements for these periods and the audit**
9:40 6 **reports covering year-end financial statements for**
9:40 7 **'97 to 2000 should not be relied upon.**
9:40 8 Q. Did you rely upon Enron's financials after
9:40 9 you got this 8-K?
9:40 10 **A. No, we did not.**
9:40 11 Q. And what you learned from this 8-K,
9:40 12 including the fact that there might be additional
9:41 13 inaccuracies in Enron's financial statements, did
9:41 14 not deter you from making additional purchases of
9:41 15 Enron securities, did it?
9:41 16 **A. I'm -- I'm not sure with respect to**
9:41 17 **investment decisions and whether or not to invest in**
9:41 18 **the securities. I'm -- I'm sure we were much more**
9:41 19 **careful about how we approached investing in those**
9:41 20 **securities and at what price we were willing to pay**
9:41 21 **for those securities.**
9:41 22 **I'm not sure this in and of itself --**
9:41 23 **what was in here, disclosed in here, where we would**
9:42 24 **have just eliminated any and all purchases of Enron**
9:42 25 **securities. There's --**

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9:42 1 Q. So the fact --
9:42 2 MS. SAVETT: Excuse me.
9:42 3 **A. -- there's prices and risk to everything.**
9:42 4 Q. (BY MS. PATRICK) That's true. So the fact
9:42 5 that Enron had disclosed in an 8-K that it believed
9:42 6 certain of its officers had committed fraud did not
9:42 7 deter you from buying the securities?
9:42 8 **A. I'm -- I'm not sure.**
9:42 9 Q. Well, you knew from the 8-K that Enron was
9:42 10 disclosing that certain of its officers had
9:42 11 committed fraud and had been discharged?
9:42 12 **A. Correct.**
9:42 13 Q. And it is also the case that you bought
9:42 14 additional securities after knowing that fact, true?
9:42 15 **A. I haven't memorized the -- the trading**
9:42 16 **records after this 8-K came out, but I could -- I --**
9:42 17 **I believe that if we were to purchase additional**
9:42 18 **securities, it would have been a different type of**
9:43 19 **an investment decision than when we were purchasing**
9:43 20 **the -- purchasing them before this 8-K came up.**
9.43 21 MS. PATRICK: Objection.
9:43 22 Nonresponsive. Would you read my question back,
9:43 23 please?
9:43 24 (Requested text read.)
9:43 25 Q. (BY MS. PATRICK) You bought additional

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9:43 1 securities, didn't you, knowing that Enron had
9:43 2 disclosed that some of its senior financial officers
9:43 3 had committed fraud?
9:43 4 **A. If you're -- if you're saying that we**
9:43 5 **purchased additional securities after this 8-K, the**
9:43 6 **answer to that question would be, yes, I guess.**
9:43 7 Q. And as a result of the 8-K, you knew that
9:43 8 fact; namely, that Enron was disclosing that certain
9:43 9 of its senior officers had committed fraud?
9:43 10 **A. Correct.**
9:43 11 Q. Is it your testimony that you don't know
9:43 12 how much of your limited partners' money you
9:44 13 invested in Enron after you knew it had committed
9:44 14 fraud?
9:44 15 **A. Ask me again.**
9:44 16 Q. Is it your testimony that you do not know
9:44 17 how much of your limited partners' money you
9:44 18 invested in Enron after you, at Staro, knew Enron
9:44 19 had committed fraud?
9:44 20 **A. It wasn't a meaningful amount.**
9:44 21 Q. Is $40 million a meaningful amount?
9:44 22 **A. $40 million is a meaningful amount.**
9:44 23 Q. Is 41 and three-quarter million dollars a
9:44 24 meaningful amount?
9:44 25 **A. Sure.**

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9:44 1 Q. If your trading records disclosed that you
9:44 2 invested 41 and three-quarter million dollars in
9:44 3 Enron securities -- zero coupons, to be precise --
9:44 4 after you knew fraud, do you want to change your
9:44 5 testimony about whether you made a meaningful
9:45 6 investment?
9:45 7 **A. Well, keep in mind, when we're making these**
9:45 8 **investments in the -- these numbers that you're**
9:45 9 **throwing out, I'm not -- one, I'm not sure that, in**
9:45 10 **the aggregate, all we were doing was purchasing**
9:45 11 **bonds, that we actually spent that much money.**
9:45 12 **But furthermore, because, as we talked**
9:45 13 **about earlier, in many cases we are hedging those**
9:45 14 **investments either with stock or other securities.**
9.45 15 **And I believe, in Enron's case, we were reducing the**
9:45 16 **risk of purchasing those bonds by selling the stock.**
9:45 17 **So I think you're -- I believe**
9:45 18 **strongly that you're misrepresenting exactly how**
9:45 19 **much we were purchasing -- or how much exposure we**
9:45 20 **were purchasing to Enron as a result of the fact of**
9:45 21 **buying these bonds and probably selling the stock.**
9:45 22 Q. While the net position may have been
9:45 23 hedged, do you -- were you aware that you had
9:45 24 purchased 41 and three-quarter million dollars of
9:46 25 zero coupons after --

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9:51 1 Q. So $40 million par value is not a
9:51 2 substantial purchase in your view?
9:51 3 MS. SAVETT: Objection as to form.
9:51 4 **A. If -- if -- if we bought $40 million par**
9:51 5 **value of securities, if those securities are priced**
9:51 6 **at 10 cents, that's only $4 million of money that**
9:51 7 **we're spending. That is not -- that I would not**
9:51 8 **consider to be material.**
9:51 9 Q. (BY MS. PATRICK) Do you know what the par
9:51 10 value of the securities was that you purchased after
9:51 11 the 8-K?
9:51 12 **A. I don't know exactly, no.**
9:51 13 Q. If --
9:51 14 **A. You -- I think you said earlier it was**
9:51 15 **four -- something in the neighborhood of**
9:51 16 **$40 million.**
9:51 17 Q. That's right.
9:52 18 **A. But I'm -- but I'm --**
9:52 19 Q. That's what your trading records seem to
9:52 20 indicate.
9:52 21 **A. But I'm highly confident that we were not**
9:52 22 **paying par or a hundred cents on the dollar for**
9:52 23 **those securities. They were trading at a**
9:52 24 **substantial discount.**
9:52 25 Q. Is that what you -- you think that after

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9:52 1 the 8-K, they were trading at a -- how substantial a
9:52 2 discount do you think they were trading at, sir?
9:52 3 **A. It would depend upon the day because it's**
9:52 4 **very volatile at that point in time.**
9:52 5 MS. SAVETT: Why don't you show him
9:52 6 the transactions --
9:52 7 MS. PATRICK: Well, I'm asking --
9:52 8 MS. SAVETT: -- so that he doesn't
9:52 9 have to do it from memory?
9:52 10 MS. PATRICK: You know what, I've been
9:52 11 doing this quite a while, and I'd just like to take
9:52 12 the deposition the way I like to take it, if you
9:52 13 don't mind.
9:52 14 MS. SAVETT: I think you'd get more
9:52 15 precise answers if he could look at the
9:52 16 transactions.
9:52 17 MS. PATRICK: Thank you.
9:52 18 Q. (BY MS. PATRICK) Sir, I'm sorry. I didn't
9:52 19 hear your answer because your lawyer was talking.
9:52 20 **A. I believe what I -- what I was saying is --**
9:52 21 **is that I am highly confident that those securities**
9:52 22 **that we were purchasing after this 8-K were trading**
9:53 23 **at significant discounts to par value when we were**
9:53 24 **buying them, and I'm also highly confident that**
9:53 25 **after this 8-K, these securities were extremely**

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9:53 1 **volatile.**
9:53 2 Q. That's one of the things you found
9:53 3 attractive about them from a trading strategy
9:53 4 perspective, right?
9:53 5 **A. It might have been.**
9:53 6 Q. Okay. Well, was it?
9:53 7 **A. I'm sure that was a consideration.**
9:53 8 Q. Because volatility, from the perspective of
9:53 9 your investment discipline, is a good thing.
9:53 10 Doesn't matter up or down, as long as it's volatile?
9:53 11 **A. That's not always the case.**
9:53 12 Q. It is often the case, isn't it?
9:53 13 MS. SAVETT: Objection as to form.
9:53 14 **A. I don't know if the -- often would be the**
9:53 15 **right characterization because we have strategies**
9:53 16 **where -- particularly if the strategy involves going**
9:53 17 ***long- or short-only securities, where volatility is***
9:53 18 **not necessarily a good thing.**
9:54 19 Q. (BY MS. PATRICK) But when you have -- what
9:54 20 did you call it, a convertible hedging? Is that
9:54 21 what you called it, the strategy we talked about
9:54 22 earlier?
9:54 23 **A. We have a strategy that we use at Staro**
9:54 24 **called convertible arbitrage.**
9:54 25 Q. Yes. And in convertible arbitrage, you

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9:54 1 don't actually care about the direction of the
9:54 2 movement. You just want volatility?
9:54 3 **A. Not necessarily true.**
9:54 4 Q. Okay. From and after the 8-K --
9:54 5 **A. Uh-huh.**
9:54 6 Q. -- is it your testimony that you had a
9:54 7 preference for the direction of the volatility of
9:54 8 the Enron securities?
9:54 9 **A. That would not be my testimony, no.**
9:54 10 Q. Volatility alone -- didn't matter, up or
9:54 11 down -- was what was your desire from and after the
9:54 12 8-K?
9:54 13 MS. SAVETT: Objection as to form.
9:54 14 **A. It might have been a consideration, but it**
9:54 15 **wasn't, certainly, the sole consideration.**
9:54 16 Q. (BY MS. PATRICK) Right. And the sole
9:55 17 consideration was also not that Enron had
9:55 18 committed -- had admitted it committed fraud, in
9:55 19 your view?
9:55 20 **A. No. It was a very important, very material**
9:55 21 **consideration, but was not the sole consideration.**
9:55 22 Q. And you bought in the face of that?
9:55 23 **A. Well, again --**
9:55 24 Q. That's yes or no, sir. You did, didn't
9:55 25 you?

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10:00 1 other shoes to drop, as you put it?
10:00 2 A. **Absolutely.**
10:00 3 Q. Do you contend that you are entitled to
10:01 4 recover under Section 11 for the purchases you made
10:01 5 after you knew Enron had admitted it committed
10:01 6 fraud?
10:01 7 A. **Ask me the question again.**
10:01 8 Q. Do you contend that you are entitled to
10:01 9 recover under Section 11 for the purchases you made
10:01 10 after you knew Enron had committed fraud?
10:01 11 MS. SAVETT: Objection. Calls for a
10:01 12 legal conclusion.
10:01 13 MS. PATRICK: Does not.
10:01 14 A. **Yeah. I think that -- that --**
10:01 15 Q. (BY MS. PATRICK) What is your claim here?
10:01 16 Are you asking the Court to award you damages for
10:01 17 securities that you purchased after you knew Enron
10:02 18 committed fraud?
10:02 19 MS. SAVETT: Same objection.
10:02 20 A. **Yeah. I mean, the answer to that is, yes,**
10:02 21 **we are asking them for damages that we suffered**
10:02 22 **purchasing after this 8-K. This 8-K did not**
10:02 23 **accurately restate the debt of this company or its**
10:02 24 **cash flows. That's not an accurate -- this is not**
10:02 25 **an accurate representation of the financial numbers,**

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10:02 1 **as restated, of -- of -- of this company.**
10:02 2 Q. (BY MS. PATRICK) And they told you it
10:02 3 might not be in that 8-K, didn't they?
10:02 4 MS. SAVETT: Objection. Asked and
10:02 5 answered.
10:02 6 Q. (BY MS. PATRICK) Sir?
10:02 7 MS. SAVETT: And objection as to form
10:02 8 as well.
10:02 9 A. **All the -- all -- they didn't -- as far as**
10:02 10 **the company knew at the time, this was an accurate**
10:02 11 **reflection of the company's restated results.**
10:02 12 Q. (BY MS. PATRICK) And they told you they --
10:02 13 that further restatements might be required, right?
10:03 14 A. **Maybe.**
10:03 15 Q. Sure, sure. And you bought knowing that?
10:03 16 MS. SAVETT: Objection. Asked and
10:03 17 answered.
10:03 18 A. **You keep suggesting that we bought**
10:03 19 **securities, and I keep trying to suggest that the --**
10:03 20 **what may have occurred is we may have actually**
10:03 21 **generated proceeds from investments after this 8-K**
10:03 22 **was produced. We may have sold so much more stock**
10:03 23 **than we bought bonds that we actually didn't spend**
10:03 24 **any money investing in Enron Corp.**
10:03 25 Q. (BY MS. PATRICK) It may have been the case

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10:03 1 that you made a profit after the 8-K for the
10:03 2 investments you made during that period?
10:03 3 A. **It might -- it could be a true statement**
10:03 4 **that we were able to offset some of the substantial**
10:03 5 **losses that we took, although not being not even**
10:03 6 **close to the entire loss or the majority of the**
10:03 7 **loss, by activities that we were engaged in after**
10:03 8 **this 8-K. That is possible. I'm not saying it is**
10:04 9 **true or it's not true. It's possible that we could**
10:04 10 **have done that.**
10:04 11 Q. It's also possible that if we looked only
10:04 12 at the period from November 8th until
10:04 13 November 27th --
10:04 14 A. **Uh-huh.**
10:04 15 Q. -- that for the trades and strategies you
10:04 16 pursued in that period, you made a profit?
10:04 17 A. **That is a possibility.**
10:04 18 Q. Don't you think that's likely?
10:04 19 A. **I don't know.**
10:04 20 Q. You were -- you had puts on in that time
10:04 21 frame, didn't you?
10:04 22 A. **I don't believe we had invested in any**
10:04 23 **puts, no.**
10:04 24 Q. You don't think you wrote puts on Enron
10:04 25 stock -- I mean, you bought puts on Enron stock?

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10:04 1 A. **We may have -- we may have purchased puts**
10:04 2 **on Enron stock. I'm not quite sure.**
10:05 3 Q. And you were certainly short selling in
10:05 4 that time frame?
10:05 5 A. **It's possible that we were selling short**
10:05 6 **the shares, especially if you're referring to the**
10:05 7 **fact that we were buying these bonds. I'm quite**
10:05 8 **sure we were selling stock against it.**
10:05 9 Q. Short selling it?
10:05 10 A. **Yes.**
10:05 11 Q. And tell me what a short sell is, please,
10:05 12 just so I'm sure we're talking about the same thing.
10:05 13 A. **What would you like me to describe?**
10:05 14 Q. Tell me what a short sell is so that we're
10:05 15 all on the same page.
10:05 16 A. **That's selling a security that you don't**
10:05 17 **actually own.**
10:05 18 Q. And you do that believing that it's going
10:05 19 to go down in price, right?
10:05 20 A. **We do that to reduce the risk of our**
10:05 21 **investments.**
10:05 22 Q. Do you short sell because you -- would you
10:05 23 ever short sell a stock that you didn't think was
10:06 24 going to go down in price?
10:06 25 A. **We would short sell a stock that we didn't**

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10:12 1 **A. Generally, that is my understanding of**
10:12 2 **swaps, yes.**
10:12 3 Q. Okay. Did you know that Enron entered into
10:12 4 swaps?
10:12 5 **A. I'm generally aware that they're -- the**
10:12 6 **businesses that they were involved in, swaps were an**
10:12 7 **element of their business.**
10:13 8 Q. Okay. And you gained that general
10:13 9 awareness from reading the 10-K?
10:13 10 **A. I don't recall whether it was -- whether I**
10:13 11 **generally formulated that opinion by reading the**
10:13 12 **10-K or by other things that I was -- I was reading,**
10:13 13 **whether it be about other competitors that were in**
10:13 14 **the same line of business or research reports or**
10:13 15 **other things that I was working on.**
10:13 16 Q. Is it your sense that it was generally
10:13 17 known that Enron entered into swaps?
10:13 18 **A. I think -- I think -- it was generally**
10:13 19 **known that companies that operated in their industry**
10:13 20 **and the businesses that were described in those**
10:13 21 **financial statements lent themselves to engaging in**
10:13 22 **swap transactions.**
10:13 23 Q. That left them exposed to the underlying
10:14 24 economic risk of the asset?
10:14 25 **A. Well, there's different -- I don't think**

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10:14 1 **swaps is a -- is a -- it's a very broad term and it**
10:14 2 **has broad definitions, and there are varying kinds**
10:14 3 **of swaps. I don't think that Enron -- that the --**
10:14 4 **the swaps that you're referring that we might do as**
10:14 5 **an investment company and the swaps that they do, I**
10:14 6 **don't necessarily think that those are -- or could**
10:14 7 **be used interchangeably. But I don't know without**
10:14 8 **knowing the exact description of the swap**
10:14 9 **transaction that each one of us are entering into.**
10:14 10 Q. Sure. I understand. The terms of any
10:14 11 particular swap are going to be whatever they are
10:14 12 under the contract that the two parties enter into,
10:14 13 fair?
10:14 14 **A. That's right.**
10:14 15 Q. Okay. But generally speaking, from your
10:14 16 experience as an investor, you understand that a
10:14 17 swap leaves the person doing the swap exposed in
10:15 18 some form or fashion to the economic risk of the
10:15 19 underlying asset, fair?
10:15 20 **A. That's a fair statement.**
10:15 21 Q. Okay. And you understood that Enron had
10:15 22 transactions like that?
10:15 23 **A. I -- it would not have surprised me to**
10:15 24 **learn that Enron -- I'm not sure that I was totally**
10:15 25 **aware of the magnitude or type of swaps that they**

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10:15 1 **were entering into.**
10:15 2 Q. But you expected that, given the business
10:15 3 they were in?
10:15 4 **A. Correct.**
10:15 5 Q. Okay. Now, let's go back to the swaps that
10:15 6 you do. When you do a swap, I just want to --
10:15 7 because I want to be sure that we're talking about
10:15 8 the same thing, and then we'll go further down,
10:15 9 because what you do is a little hard for me to get.
10:15 10 You buy a note, and you swap it to
10:15 11 somebody. I notice in your trading ledger you have
10:15 12 swap accounts with Deutsche Bank and Bear Stearns;
10:15 13 is that right?
10:16 14 **A. Are you referring to the ascot?**
10:16 15 Q. No. I'm not even there yet. Let's do
10:16 16 this.
10:16 17 MS. PATRICK: Oh, shoot. Sorry.
10:16 18 **A. While you're doing that, may I use the**
10:16 19 **restroom?**
10:16 20 MS. PATRICK: You bet. We can take
10:16 21 a -- why don't we take a 10-minute break.
10:16 22 THE VIDEOGRAPHER: We are off the
10:16 23 record at 12:11 p.m.
10:16 24 (A recess was taken.)
10:16 25 THE VIDEOGRAPHER: We are back on the

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11:30 1 record at 1:25 p.m.
11:30 2 Q. (BY MS. PATRICK) Let me ask you a couple
11:30 3 of questions more about the -- the claims that you
11:30 4 have, and then we're going to go into the trading in
11:30 5 more detail, but I want to be sure I have it clear.
11:30 6 Did you lose money on -- do you have a claim on your
11:30 7 equity, do you think?
11:30 8 **A. I think we have a claim on our entire**
11:30 9 **investment in Enron.**
11:30 10 Q. Of which the equity would be a part of it?
11:30 11 **A. I believe that's true, yes.**
11:30 12 Q. Okay. And you can't -- it's your view,
11:30 13 just so I have it clear, that you can't consider the
11:30 14 debt in isolation because, as it was purchased at
11:30 15 Staro, the investment in Enron was both debt and
11:30 16 equity?
11:31 17 MS. SAVETT: Objection to the form.
11:31 18 It calls for a legal conclusion.
11:31 19 **A. Say -- say that -- ask me the question**
11:31 20 **again.**
11:31 21 Q. (BY MS. PATRICK) Sure, sure. When I just
11:31 22 asked you the question, I -- we started with, you
11:31 23 said, we have a loss on our investment in Enron.
11:31 24 **A. Right.**
11:31 25 Q. And I think that what you're telling me,

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11:36 1 A. **Uh-huh.**
11:36 2 Q. Have you seen this document before?
11:36 3 A. **Yes.**
11:36 4 Q. Did you prepare this?
11:36 5 A. **No, I did not.**
11:36 6 Q. Do you know who did?
11:36 7 A. **Exactly who at Stark or -- no, I'm not**
11:36 8 **sure.**
11:36 9 Q. Okay. Let's go to -- let's -- go to the --
11:36 10 the page -- let's see. Excuse me. I've got to find
11:37 11 the registered notes first, and then I'll be in a
11:37 12 little better shape.
11:37 13 Do you have -- look at the first page
11:37 14 that's marked Staro 1957.
11:37 15 A. **Yeah.**
11:37 16 Q. Are there any transactions that are listed
11:37 17 on this page that are swaps?
11:37 18 A. **Yes.**
11:38 19 Q. Okay. Show -- show me which one would be a
11:38 20 swap so we can just kind of walk through it, please.
11:38 21 A. **Well, the third down.**
11:38 22 Q. SS.FU?
11:38 23 A. **Uh-huh.**
11:38 24 Q. Yes?
11:38 25 A. **Yes.**

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11:38 1 Q. Okay. So that's, according to the legend,
11:38 2 Stark Swap First Union; is that right?
11:38 3 A. **Correct.**
11:38 4 Q. Okay. In that transaction --
11:38 5 A. **Uh-huh.**
11:38 6 Q. -- did Stark actually buy the zero coupon,
11:38 7 or was it First Union that bought the zero coupon
11:38 8 and Stark entered into a swap?
11:38 9 A. **I'm not sure of the sequence of events, but**
11:38 10 **my -- to my knowledge, what I can tell you regarding**
11:38 11 **in terms of what I know is that we bought the**
11:38 12 **economic interest, in two and a half million face**
11:39 13 **amount of Enron's zero coupon registered securities,**
11:39 14 **on October 22nd, at 57 and a half.**
11:39 15 Q. Uh-huh.
11:39 16 A. **And approximately nine days later, we sold**
11:39 17 **a million of that or 40 percent of that at a loss of**
11:39 18 **10 and a half points.**
11:39 19 Q. Okay. I'm -- I understand the pricing.
11:39 20 Now let me ask you my -- let me back up and ask you
11:39 21 my question.
11:39 22 A. **Uh-huh.**
11:39 23 Q. There -- you -- one can buy an economic
11:39 24 interest in a derivative without buying the security
11:39 25 itself, right?

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11:39 1 A. **Uh-huh.**
11:39 2 Q. Yes?
11:39 3 A. **Yes.**
11:39 4 Q. Okay. In this transaction, do you know
11:39 5 whether Stark bought the security or just bought the
11:39 6 economic interest?
11:39 7 A. **I do not know.**
11:39 8 Q. Is it possible that you did not buy the
11:39 9 security and only bought the economic interest?
11:39 10 A. **I don't know. It's more an issue of --**
11:39 11 **it's getting -- it's a -- it's a legal thing, and I**
11:39 12 **don't -- I'm not familiar with it.**
11:40 13 Q. Okay. But it's at least possible, in your
11:40 14 mind, given your understanding of the market, that
11:40 15 you didn't actually buy the bond itself?
11:40 16 A. **It is possible that we didn't physically**
11:40 17 **buy the bond. It's possible, yes.**
11:40 18 MS. PATRICK: Okay. We need to change
11:40 19 the tape real quick.
11:40 20 THE VIDEOGRAPHER: We are off the
11:40 21 record at 1:35 p.m.
11:40 22 (A recess was taken.)
11:42 23 BEGINNING OF TAPE NUMBER 4:
11:43 24 THE VIDEOGRAPHER: We are back on the
11:43 25 record at 1:38 p.m.

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11:43 1 Q. (BY MS. PATRICK) As a potential class
11:43 2 representative, do you understand that you have an
11:43 3 obligation to be candid with the Court in what you
11:43 4 say to the Court?
11:43 5 A. **Yes.**
11:43 6 Q. And that you have an obligation to explain
11:43 7 to Judge Harmon what your claims are and why you're
11:43 8 an appropriate class representative?
11:43 9 A. **Uh-huh, yes.**
11:43 10 Q. Did you also understand that you had an
11:43 11 obligation to disclose to the Court the transactions
11:43 12 and trades that you had made in Enron securities as
11:44 13 a whole?
11:44 14 A. **Yes.**
11:44 15 Q. All right. Look back at Exhibit 139,
11:44 16 please.
11:44 17 A. **(Witness complies.)**
11:44 18 Q. This is the certificate signed by
11:44 19 Mr. Lancaster, the general counsel of Staro Asset
11:44 20 Management; is that right?
11:44 21 A. **Yes.**
11:44 22 Q. And if you'll look at Page 5, it says,
11:44 23 plaintiff's transactions in the bond securities of
11:44 24 Enron Corp. are listed on the attached pages. Do
11:44 25 you see that?

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11:49 1 Q. Sure.
11:49 2 **A. -- fill out the whole question?**
11:49 3 Q. Sure. Are you -- you're aware, aren't you,
11:49 4 that you're asking to be designated a class
11:49 5 representative for a debt class?
11:49 6 **A. That's correct.**
11:49 7 Q. And the position has -- are you aware that
11:49 8 the position has been taken in this case that there
11:49 9 should, indeed, be a separate debt-only class?
11:49 10 **A. Yeah, I -- I'm not sure how to answer that.**
11:50 11 **I mean, it's -- the fact that we've taken whatever**
11:50 12 **separate class or not is more of an issue of**
11:50 13 **discussion among the attorneys.**
11:50 14 Q. Well, you're -- you're -- you're here as
11:50 15 the class representative, so I have to ask you
11:50 16 what -- about it. I can't ask your lawyers.
11:50 17 **A. Okay.**
11:50 18 Q. Do you have -- can you give me any reason,
11:50 19 that you're aware of, why there needs to be a
11:50 20 separate debt-only lass?
11:50 21 **A. Personally, no, I cannot.**
11:50 22 Q. Okay. And it's your position that the
11:50 23 equity and debt classes do not have conflicting
11:51 24 interests?
11:51 25 **A. No, I don't believe that we have**

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11:51 1 **conflicting interests.**
11:51 2 **(Deposition Exhibit 142 was marked.)**
11:51 3 Q. (BY MS. PATRICK) Have a look at
11:51 4 Exhibit 142. This is a brief that was filed, a
11:51 5 reply brief in further support of Staro Asset
11:51 6 Management's motion for appointment as lead counsel
11:51 7 on behalf of debt securities purchasers.
11:51 8 **A. Okay.**
11:51 9 Q. Did you review this before it was filed?
11:51 10 **A. I did not, no.**
11:51 11 Q. Do you believe that someone at Staro
11:51 12 reviewed it before it was filed?
11:51 13 **A. I do believe that.**
11:51 14 Q. Would you look at Page 3?
11:51 15 **A. (Witness complies.)**
11:51 16 Q. Do you see the heading there, 3-A? What
11:51 17 does that heading say?
11:52 18 **A. Roman numeral four?**
11:52 19 Q. Four-A. I'm sorry. Yes. What does that
11:52 20 say?
11:52 21 **A. The equity and debt classes have**
11:52 22 **conflicting interests.**
11:52 23 Q. Do you think your lawyers were taking a
11:52 24 position that Staro did not espouse itself?
11:52 25 **A. I'm not sure I understand the --**

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11:52 1 **that question.**
11:52 2 Q. Well, your lawyers are authorized to speak
11:52 3 on your behalf to the Court, right?
11:52 4 **A. I believe so.**
11:52 5 Q. And you expect them to accurately represent
11:52 6 your position to the Court, right?
11:52 7 **A. I -- yes.**
11:52 8 Q. And do you have any doubt that they were
11:52 9 doing that when they told the Court that it was your
11:52 10 view that the equity and debt classes have
11:52 11 conflicting interests?
11:52 12 **A. No.**
11:52 13 Q. Okay. And if you'll look at the next page,
11:52 14 on Page 4, do you see there that one of the things
11:52 15 that's happening in that paragraph is that your
11:52 16 lawyers are contending that other potential lead
11:53 17 plaintiffs are not adequate representatives because
11:53 18 they have both equity and debt claims? Do you see
11:53 19 that?
11:53 20 **A. Yes.**
11:53 21 Q. And do you see there that -- do you agree
11:53 22 with that?
11:53 23 MS. SAVETT: Objection as to form.
11:53 24 **A. Yeah, I'm -- I'm assuming this is -- if**
11:53 25 **what is -- if what is here is an accurate**

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11:53 1 **reflection, I would say that these investors have**
11:53 2 **more of a claim under their equity investments than**
11:53 3 **they do their debt investments.**
11:53 4 Q. (BY MS. PATRICK) And that is or is not a
11:53 5 conflict in your view?
11:53 6 **A. Again, that's more of a discussion among**
11:53 7 **our attorneys.**
11:53 8 Q. Okay. And you see there, listed next to
11:53 9 Staro, what does it say the equity claim is there?
11:53 10 **A. Zero.**
11:54 11 Q. And what does it say is your percentage
11:54 12 investment in debt securities?
11:54 13 **A. A hundred percent.**
11:54 14 Q. That's not accurate, is it?
11:54 15 MS. SAVETT: Objection.
11:54 16 **A. No, I wouldn't say that.**
11:54 17 Q. (BY MS. PATRICK) You wouldn't say it's not
11:54 18 accurate?
11:54 19 **A. No. I would say it is accurate.**
11:54 20 Q. You have no equity investments?
11:54 21 **A. It says equity claim.**
11:54 22 Q. Well, you -- we just talked about the fact
11:54 23 that you thought you have an equity claim. Do you
11:54 24 now think you don't have an equity claim?
11:54 25 MS. SAVETT: Objection as to form.

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11:59 1 MS. SAVETT: 141?
11:59 2 MS. PATRICK: 141.
11:59 3 Q. (BY MS. PATRICK) Look at Exhibit 141 and
11:59 4 give me an example of that, if you would, please.
11:59 5 **A. You can look at the second page, I believe.**
12:00 6 Q. Okay. Which has got 1958 at the bottom of
12:00 7 it?
12:00 8 **A. 1957.**
12:00 9 Q. Okay. Sorry. Okay.
12:00 10 **A. And you can see after November 8th, at the**
12:00 11 **bottom of the page, that we were actually selling**
12:00 12 **securities after November 8th. That price is**
12:00 13 **somewhere around -- just over 50. And we were**
12:00 14 **purchasing bonds, specifically on November 20th, at**
12:00 15 **prices below 40. So significant discounts to the**
12:00 16 **par value of those securities --**
12:00 17 Q. Okay.
12:00 18 **A. -- par value or created value, if you will.**
12:00 19 Q. Right. And just so I'm sure we're talking
12:00 20 about the same thing, because these are zero coupon
12:01 21 bonds --
12:01 22 **A. Uh-huh.**
12:01 23 Q. -- they're issued at -- at a par value, if
12:01 24 you will, somewhere around $60, and the principal
12:01 25 amount of the bond increases as an accrual in lieu

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12:01 1 of interest; is that right?
12:01 2 **A. That's basically true, yes.**
12:01 3 Q. Okay. And, so, when you talk about a
12:01 4 created value --
12:01 5 **A. Uh-huh.**
12:01 6 Q. -- what you're talking about is what the
12:01 7 principal payment should have been on the bond had
12:01 8 they been paid at that particular point in time?
12:01 9 **A. That's basically true, yes.**
12:01 10 Q. Okay. And, so, it might be 70, it might
12:01 11 be 75 --
12:01 12 **A. Right.**
12:01 13 Q. -- depending upon how long the note had
12:01 14 been outstanding?
12:01 15 **A. Correct, and it changes every single day.**
12:01 16 Q. Right. And in terms of this purchase, if
12:01 17 we just look at November 20th --
12:01 18 **A. Uh-huh.**
12:01 19 Q. -- okay, is this an outright purchase, or
12:01 20 is this a swap?
12:01 21 **A. This would have been an outright purchase.**
12:01 22 Q. Okay. And in order to make you whole on
12:01 23 the money you put into those trades on
12:01 24 November 20th, into those -- let's just look at
12:02 25 those two purchases.

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12:02 1 **A. Uh-huh.**
12:02 2 Q. In order to make you whole on that
12:02 3 investment, you would need to receive only $39 in
12:02 4 payment of -- of that obligation, right?
12:02 5 **A. What do you mean by make me whole?**
12:02 6 Q. You took $39 out of your pocket --
12:02 7 **A. Yeah.**
12:02 8 Q. -- to buy those bonds?
12:02 9 **A. Right.**
12:02 10 Q. If you got $39 back, you would have
12:02 11 received what you spent.
12:02 12 **A. On buying those bonds, that's correct.**
12:02 13 Q. On buying those bonds.
12:02 14 **A. Right.**
12:02 15 Q. You wouldn't necessarily get the
12:02 16 appreciation from the extra accrual of interest, but
12:02 17 in terms of your out-of-pocket, $39 was it?
12:02 18 **A. Right. And I would have earned nothing on**
12:02 19 **the investment.**
12:02 20 Q. Understood.
12:02 21 **A. Uh-huh.**
12:02 22 Q. Now, since you bought notes at a discount,
12:02 23 do you agree that it takes less money to repay you
12:02 24 for that purchase price than it does someone who
12:02 25 bought the notes on the registration statement

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12:03 1 at $60?
12:03 2 **A. No. I don't agree with that.**
12:03 3 Q. Why not?
12:03 4 **A. Because when I buy a bond, I'm buying a**
12:03 5 **contract for the company to pay me back X dollars.**
12:03 6 **It doesn't matter that I bought -- where I bought**
12:03 7 **it. I could have paid X plus. I could have paid**
12:03 8 **X minus something.**
12:03 9 **I'm ask -- when I buy a bond, I'm**
12:03 10 **asking the company to honor their contractual**
12:03 11 **obligations to repay me what they are obligated to**
12:03 12 **pay on those bonds.**
12:03 13 Q. Uh-huh. But in terms of --
12:03 14 **A. I'm not -- I don't -- I certainly don't**
12:03 15 **invest in bonds with the hope that the company's**
12:03 16 **going to pay me back what I paid for them.**
12:03 17 Q. But when you purchased these bonds --
12:03 18 **A. Uh-huh.**
12:03 19 Q. -- you purchased them after a restatement
12:03 20 and in the face of significant adverse information?
12:03 21 **A. Relying upon the restated numbers in**
12:03 22 **the 8-K.**
12:03 23 Q. And the possibility that there would be
12:03 24 further restatements?
12:03 25 **A. That there may be more restatements,**

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12:09 1 can at least help me read it. You see there it
12:09 2 says, total loss, $38,791,638?
12:09 3 **A. Yes.**
12:09 4 Q. But it says also, on the second column from
12:09 5 the left, remaining cost basis. Do you see that?
12:09 6 **A. Yes.**
12:09 7 Q. And that number is $16,447,000?
12:09 8 **A. Yes.**
12:09 9 Q. And then you've got a market value number
12:09 10 there as of December 17th, right?
12:09 11 **A. Yes.**
12:09 12 Q. And then you've got unrealized profit or
12:09 13 loss. Do you see that?
12:09 14 **A. Uh-huh.**
12:09 15 Q. Yes?
12:09 16 **A. I do see that, yes.**
12:09 17 Q. Okay. Now, just so I'm clear on this, is
12:09 18 it accurate to say that the amount of capital you
12:09 19 spent on these Enron securities is $16.4 million?
12:10 20 MS. SAVETT: Objection as to form.
12:10 21 **A. Can you repeat the question again?**
12:10 22 Q. (BY MS. PATRICK) Yes. How much capital
12:10 23 did you spend in your Enron investment strategy?
12:10 24 MS. SAVETT: Objection as to form.
12:10 25 **A. I don't know this report well enough to --**

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12:10 1 **to -- to say for sure if this represents the figures**
12:10 2 **I would need to -- to have to answer that question.**
12:10 3 Q. (BY MS. PATRICK) What do you understand
12:10 4 cost basis to be?
12:10 5 **A. It can be defined many different ways.**
12:10 6 **With respect to what it means here -- I can't be for**
12:11 7 **sure. My inclination is to believe that the**
12:11 8 **remaining cost -- that the remaining cost basis**
12:11 9 **would be what we have invested in the position**
12:11 10 **that's remaining.**
12:11 11 Q. The -- the cash you spent?
12:11 12 **A. Yes.**
12:12 13 Q. Okay. If that's your cost basis, how do
12:12 14 you get to a loss amount of over $40 million?
12:12 15 MS. SAVETT: Objection as to form. It
12:12 16 says remaining cost basis.
12:12 17 **A. Yeah. This is the cost basis that's**
12:12 18 **remaining on bonds that -- for which we have not yet**
12:12 19 **realized our losses.**
12:12 20 Q. (BY MS. PATRICK) Uh-huh.
12:12 21 **A. The realized -- I mean, this doesn't --**
12:12 22 **this -- these -- the remaining quantity, the**
12:12 23 **remaining cost basis and the remaining market value**
12:12 24 **is completely separate from the realized, the very**
12:12 25 **next column. The realized column heading there is**

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12:12 1 **what we've actually realized. That's our realized**
12:12 2 **losses at that point in time.**
12:12 3 **And we've unrealized an additional**
12:12 4 **7.6 million as of this date. So if we were to**
12:12 5 **liquidate everything that we owned as of 12/17, we**
12:12 6 **would have realized losses of close to $40 million.**
12:13 7 Q. What is not reflected on this sheet,
12:13 8 though, are your Enron ascots and your Enron puts
12:13 9 and your Enron short sells?
12:13 10 **A. That is true. These are our bonds.**
12:13 11 Q. Okay. And, so, you cannot tell me what
12:13 12 your loss on the strategy is because you haven't
12:13 13 taken those numbers into account on this sheet?
12:13 14 **A. Yes. I can tell -- not -- not on this**
12:13 15 **sheet, that has not been taken into account.**
12:13 16 Q. Okay. Do you know what the number is for
12:13 17 the overall strategy?
12:13 18 **A. Yes.**
12:13 19 Q. What is it?
12:13 20 **A. It's over $20 million.**
12:13 21 Q. And how much of that is attributable to
12:13 22 losses during the 144A period?
12:13 23 **A. I do not know the answer to that.**
12:13 24 Q. How much of it is on zero coupon bonds
12:13 25 purchased after the registration statement, but

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12:13 1 before the restatement on the form 8-K?
12:13 2 **A. I do not know the answer to that.**
12:14 3 Q. And we do know -- or at least your -- your
12.14 4 sense is that, after the 8-K, there would be a
12:14 5 profit on the strategy?
12:14 6 **A. I don't -- I can't be sure of that, up**
12:14 7 **until the class action period ends on 11/27 of '01.**
12:14 8 **I can't be so sure that we profited from 11/8**
12:14 9 **through 11/27.**
12:14 10 Q. But you might have, if you add on to 11/27,
12:14 11 to December, profited, is that what you're saying?
12:14 12 **A. I would be a little more confident -- it is**
12:14 13 **true that I would be a little more confident in**
12:14 14 **saying that we made money since 11/8/01 on the**
12:14 15 **strategy, but I -- but I'm not a hundred percent**
12:14 16 **sure.**
12:14 17 Q. Okay. How did you --
12:14 18 **A. I mean, this -- this -- this company was**
12:14 19 **such a mess that I'm just not sure.**
12:14 20 Q. Well, have you not at Staro sat down and
12:15 21 figured out what to tell your investors you lost for
12:15 22 them in your overall Enron strategy?
12:15 23 **A. Oh, absolutely. They -- if -- when asked,**
12:15 24 **we lost over $20 million investing in Enron, but we**
12:15 25 **don't tell them, our limited partners, look, from**

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12:20 1 Q. Yes.
12:20 2 **A. Well, there's a purchase for 4.4 million**
12:21 3 **face amount of bonds at 14 cents on the dollar.**
12:21 4 ***Underneath that, there's a purchase of 5.5 million***
12:21 5 **at 15 cents on the dollar.**
12:21 6 Q. Okay. Let's do it -- see if we can do it
12:21 7 this way. Do you see the little entries at the top,
12:21 8 Shepherd, Stark, Swap, Deutsche Banc, et cetera?
12:21 9 **A. Yeah.**
12:21 10 Q. Is that the capital you laid out to buy
12:21 11 there? Is that what that is?
12:21 12 MS. SAVETT: What exhibit are you
12:21 13 working on?
12:21 14 **A. *No, that is not.***
12:21 15 MS. PATRICK: 139.
12:21 16 Q. (BY MS. PATRICK) What is that? Is that
12:21 17 the par value?
12:21 18 **A. Yeah. That's the face amount of bonds we**
12:21 19 **bought.**
12:21 20 Q. Okay. So in order to figure out how much
12:21 21 additional capital you put in in this December time
12:21 22 period in these funds, you'd multiply the purchase
12:21 23 price times the par value?
12:21 24 **A. That would get you substantially close,**
12:22 25 **yes.**

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12:22 1 Q. Okay. Did you tell your investors that you
12:22 2 were buying notes after Enron's bankruptcy?
12:22 3 **A. Well, we may have. We certainly didn't --**
12:22 4 **I mean, we didn't -- we weren't transacting them in,**
12:22 5 **again, a material amount of the bonds that we**
12:22 6 **thought it was necessary to tell them, just like we**
12:22 7 **don't tell them when we're buying and selling**
12:22 8 **anything on a daily basis.**
12:22 9 Q. Okay. Do you know what your total cash
12:22 10 investment was to purchase outright -- not swaps, to
12:22 11 purchase outright 144A notes?
12:22 12 **A. I could not tell you that, no, not without**
12:22 13 **performing calculations --**
12:23 14 Q. How would you do that?
12:23 15 **A. -- using -- using these trading records.**
12:23 16 Q. How would you do that?
12:23 17 **A. Okay. You would want to know what again,**
12:23 18 **approximately how much capital we spent --**
12:23 19 Q. To buy 144A notes.
12:23 20 **A. In Enron?**
12:23 21 Q. To actually buy the notes, as opposed to
12:23 22 swapping.
12:23 23 **A. Well, we'd have to have every**
12:23 24 **transaction -- purchase transactions of all the**
12:23 25 **144As. We'd take the base amount times the purchase**

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12:23 1 **price and sum that total up.**
12:23 2 Q. Okay. Is -- just so I'm clear, if you look
12:23 3 at Exhibit 141 --
12:23 4 **A. Yeah, 141.**
12:23 5 Q. Let's go to the 144A page, just so I do it
12:23 6 right, because I'm going to have to do this. Find
12:23 7 the -- look at Page 1959.
12:23 8 **A. Right.**
12:23 9 Q. Okay. You see there the SW.NW?
12:24 10 **A. Yes.**
12:24 11 Q. It says, purchase, 3/26/01, 12 and a half
12:24 12 million at 59?
12:24 13 **A. Correct.**
12:24 14 Q. So if I wanted to understand, assuming that
12:24 15 that's not a swap, which it is --
12:24 16 **A. But assuming that it's not, you would take**
12:24 17 **the 12 and a half million face amount that's**
12:24 18 **there --**
12:24 19 Q. Uh-huh.
12:24 20 **A. -- and you would multiply it times .59.**
12:24 21 Q. And that would be the amount you invested
12:24 22 in 144A notes, if they weren't swapped?
12:24 23 **A. That's a very good approximation, if not**
12:24 24 **precise, yes.**
12:24 25 Q. Okay. And, similarly, for the notes that

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12:24 1 you purchased after the registration statement, if
12:24 2 you look at Page 1958 --
12:24 3 **A. Just so you -- just as a note, you'll**
12:24 4 **notice, though, that on Page 1959, in looking at**
12:24 5 **this, approximately a week later we were purchase --**
12:24 6 **as well as selling other -- the same security.**
12:25 7 Q. Uh-huh.
12:25 8 **A. So I'm just giving you an indication that**
12:25 9 **it's an -- it was -- at this point in time, it was**
12:25 10 **actively traded. And, so, there's -- the**
12:25 11 **calculation is going to get pretty tedious.**
12:25 12 Q. I know. I tried to do it.
12:25 13 **A. Okay. But it can be --**
12:25 14 Q. But that's part of my point. Let me -- let
12:25 15 me see if I can find the -- for example, if you look
12:25 16 at just those -- those first two -- look at the
12:25 17 SW.NW.
12:25 18 **A. Uh-huh.**
12:25 19 Q. Okay.
12:25 20 **A. Uh-huh.**
12:25 21 Q. And just to make it easy, you've got a
12:25 22 purchase April 4th, '01, right?
12:25 23 **A. Yes, seven and a half million.**
12:25 24 Q. Yeah. And you've got a sell the same day
12:25 25 of 7.15 million, right?

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12:30 1 **from a personal standpoint, in my mind, I never**
12:30 2 **thought there to be a fundamental economic**
12:30 3 **difference between a 144A and a -- and a fully**
12:30 4 **registered security, so -- for what it's worth.**
12:30 5 Q. Well, whatever your point is, do you know
12:30 6 whether Section 11 gives you the right to recover
12:30 7 for 144A purchases or, instead, is limited only to
12:30 8 losses on a registration statement?
12:30 9 MS. SAVETT: Objection as to the
12:30 10 form. Calls for a legal conclusion.
12:30 11 **A. Yeah. That would -- that's something that**
12:30 12 **I'd have -- have to just -- that my lawyers would**
12:31 13 **handle.**
12:31 14 Q. (BY MS. PATRICK) I know. So your answer
12:31 15 is you don't know one way or the other about that?
12:31 16 **A. Not definitively sure, no.**
12:31 17 Q. But there is no question that there is a
12:31 18 significant volume of bonds or -- let me rephrase
12:31 19 the question. There's no question that you made a
12:31 20 number of purchases of 144A notes before the
12:31 21 registration statement was ever issued?
12:31 22 **A. I believe that we made purchases of bonds**
12:31 23 **before -- as 144A securities, before the**
12:31 24 **registration statement was issued, yes. I don't**
12:31 25 **know if significant is the correct characterization**

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12:31 1 **or not.**
12:31 2 Q. Well, okay.
12:31 3 MS. PATRICK: Are we up to 143?
12:31 4 THE REPORTER: Uh-huh.
12:31 5 (Deposition Exhibit 143 was marked.)
12:31 6 MS. PATRICK: I'm just- -- anybody
12:32 7 else that wants one, you can get it out of the box,
12:32 8 Q. (BY MS. PATRICK) Can you recognize
12:32 9 Exhibit 143 --
12:32 10 **A. Yeah.**
12:32 11 Q. -- as the registration statement for the
12:32 12 zero coupon bonds?
12:32 13 **A. Yes, I can.**
12:32 14 Q. Okay. And what was the date on which the
12:32 15 registration sale took place, if you know?
12:32 16 **A. I won't know until I see it on here**
12:33 17 **somewhere.**
12:33 18 Q. Okay.
12:33 19 **A. I know it was filed on June 1st.**
12:33 20 Q. Do you think it was --
12:33 21 **A. The S-3 was filed on June 1st.**
12:33 22 Q. Yeah. Do you think it was July?
12:33 23 **A. Ma'am, I don't -- I don't know.**
12:33 24 Q. Okay. Let's see what your complaint says.
12:33 25 Oh, I'm sorry.

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12:33 1 **A. There's an amendment here that's July 13th.**
12:33 2 Q. Yeah. Do you think that's when it was
12:34 3 filed?
12:34 4 **A. Don't know.**
12:34 5 Q. Okay. Let's see. Here we go. I'm just
12:34 6 going to give you an excerpt. I can mark it as an
12:34 7 exhibit if you'd like. This is the current version
12:34 8 of the complaint that is on file in Enron.
12:34 9 **A. Okay.**
12:34 10 Q. Okay? And this is the Section 11 claim.
12:34 11 **A. Uh-huh.**
12:34 12 Q. All right? And at Page 395, there is a
12:34 13 listing of registration dates for Enron offerings
12:34 14 during the class period. And do you see what it
12:34 15 says there for the effective date of the
12:34 16 registration statement?
12:34 17 **A. Yeah, June 1st.**
12:34 18 Q. And it was amended in July, right?
12:34 19 **A. Uh-huh.**
12:34 20 Q. And you purchased 144A notes before both of
12:35 21 those dates, right?
12:35 22 **A. Yes.**
12:35 23 Q. Okay. And, so, by definition, since the
12:35 24 144 -- I'm sorry. Excuse me. By definition, since
12:35 25 the registration statement wasn't filed until

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12:35 1 June 1st --
12:35 2 **A. Uh-huh.**
12:35 3 Q. -- any purchases before that were not
12:35 4 pursuant to the registration statement, they were
12:35 5 pursuant to the offering memorandum?
12:35 6 MS. SAVETT: Objection. Calls for a
12:35 7 legal conclusion.
12:35 8 **A. Yeah. I -- I don't know if there's a --**
12:35 9 Q. (BY MS. PATRICK) Well, let's just --
12:35 10 **A. -- that's splitting hairs around legalese**
12:35 11 **or not.**
12:35 12 Q. Well, I'm not splitting hairs around
12:35 13 legalese. I'm talking about months of time.
12:35 14 **A. Okay.**
12:35 15 Q. Okay? And that's all I'm trying to figure
12:35 16 out, just so I've got it clear. Look at
12:36 17 Exhibit 141, which is your trading ledger.
12:36 18 **A. Uh-huh.**
12:36 19 Q. Look at the page marked 1959.
12:36 20 **A. Okay.**
12:36 21 Q. And you see there the SW.NW --
12:36 22 **A. Yeah, uh-huh.**
12:36 23 Q. -- swap? You've got a swap transaction
12:36 24 March 26th, 2001 --
12:36 25 **A. Sure.**

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12:59 1 that right?
12:59 2 MR. STOCK: That's correct.
12:59 3 MS. PATRICK: And we will note for the
12:59 4 record our objection to the fact that Exhibits 144
12:59 5 and 145, at least as they have been produced to us,
12:59 6 have a number of pages that have been excised or
13:00 7 redacted, and we request a copy of the complete
13:00 8 memorandum.
13:00 9 We're happy to agree to an appropriate
13:00 10 attorney's eyes only and file under seal protective
13:00 11 order if you'd like that, but we really do need to
13:00 12 be able to see the whole thing, in part, to
13:00 13 establish the authority of Staro, if it has it, to
13:00 14 file suit and what its obligations of disclosure are
13:00 15 to its investors.
13:00 16 MR. STOCK: And we'll take that under
13:00 17 advisement.
13:00 18 MS. PATRICK: All right. Thank you.
13:00 19 I'm going to give those to you.
13:00 20 MS. SAVETT: Do you have copies?
13:00 21 MS. PATRICK: They're yours.
13:00 22 MS. SAVETT: I know. But we want to
13:00 23 see --
13:00 24 MS. PATRICK: Yes.
13:00 25 MS. SAVETT: -- exactly what you --

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13:00 1 MS. PATRICK: I'll give them to you at
13:00 2 a break.
13:00 3 MS. SAVETT: Later. Okay.
13:00 4 Q. (BY MS. PATRICK) Back on exhibit -- the
13:00 5 brief. Where did it go? Exhibit -- Exhibit 142,
13:00 6 before the break, sir, you told me that you had
13:00 7 offset some of the losses on the zero coupon bonds
13:01 8 through the sale of -- short sell of Enron equities
13:01 9 and by buying puts, right?
13:01 10 MS. SAVETT: Excuse me. Could you
13:01 11 repeat the question again?
13:01 12 (Requested text read.)
13:01 13 MS. PATRICK: No. Let me save you
13:01 14 some time. I don't have to wind up. Let me just do
13:01 15 what I'm doing.
13:01 16 Q. (BY MS. PATRICK) Look at Page 4 of
13:01 17 Exhibit 142.
13:01 18 **A. (Witness complies.)**
13:01 19 Q. Do you see there your debt securities claim
13:01 20 in the reply brief that your lawyers filed with the
13:01 21 court is listed at $40 million?
13:01 22 **A. Uh-huh.**
13:01 23 Q. Yes?
13:01 24 **A. Yes.**
13:01 25 Q. And you don't say anything in this reply

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13:01 1 brief to let Judge Harmon know that you have sold
13:01 2 short Enron equity or made money through the
13:01 3 purchase and exercise of puts on Enron equity; is
13:02 4 that right?
13:02 5 MS. SAVETT: Objection as to form.
13:02 6 **A. It doesn't say that in this complaint. I'm**
13:02 7 **not sure whether we've made her aware of that or**
13:02 8 **not.**
13:02 9 Q. (BY MS. PATRICK) Can you think of -- are
13:02 10 you aware of any pleading that has advised
13:02 11 Judge Harmon that you have, as you indicated
13:02 12 earlier, roughly $20 million worth of profit from
13:02 13 short selling and the exercise of puts?
13:02 14 **A. Not to my knowledge. I'm not aware of**
13:02 15 **anything.**
13:02 16 Q. Why didn't you tell the judge that when you
13:02 17 were asking to be appointed lead plaintiff?
13:02 18 **A. That's a legal --**
13:02 19 MS. SAVETT: Objection as to form.
13:02 20 Calls for a legal --
13:02 21 **A. It's a legal issue between and among our**
13:02 22 **attorneys.**
13:02 23 Q. (BY MS. PATRICK) You certainly thought, in
13:02 24 talking to your investors about it, that it was
13:02 25 relevant for them to know that you had made a profit

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13:02 1 on your short sells and exercising put rights?
13:02 2 MS. SAVETT: Objection as to form.
13:02 3 **A. We -- we didn't go out of our way to let**
13:03 4 **any of our limited partners know how much we made or**
13:03 5 **lost in Enron. And, typically, as a matter of**
13:03 6 **policy or, I guess, fact, we don't go out of our way**
13:03 7 **to let our investors know our profits and loss on**
13:03 8 **any individual investment.**
13:03 9 **They get a statement at the end of**
13:03 10 **every month, and they get a quarterly letter that**
13:03 11 **might say or mention that we made or lost money**
13:03 12 **to -- if it's any material amount in a particular**
13:03 13 **investment, but we don't provide exact details.**
13:03 14 Q. (BY MS. PATRICK) And you indicated earlier
13:03 15 that Enron occupied a significant amount of your
13:03 16 time in the fall of 2001?
13:03 17 **A. Yes.**
13:03 18 Q. Did it occupy a significant amount of time
13:03 19 for the staff at Stark as it managed these funds?
13:03 20 **A. Of the entire staff, no.**
13:03 21 Q. Was this a major position that you were
13:03 22 managing in that time frame, in terms of the
13:03 23 movements of the market and the time it took?
13:04 24 **A. Yeah. It was -- it was significant.**
13:04 25 Q. Did you do anything at all to inform your

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13:09 1 Q. Okay. Are you bearing any expenses
13:09 2 associated with this case?
13:09 3 **A. I don't know for sure. I -- I would think**
13:09 4 **that we are bearing expenses, both expenses measured**
13:09 5 **in the form of monetary expenses, as well as the**
13:09 6 **time and effort on the part of our professionals at**
13:09 7 **Stark.**
13:09 8 Q. What monetary expenses are you bearing, to
13:10 9 your knowledge?
13:10 10 **A. To my knowledge, I couldn't identify them.**
13:10 11 Q. Are you taxing your limited partners to pay
13:10 12 for those expenses?
13:10 13 **A. I don't know the answer to that.**
13:10 14 Q. Is it the intent of Staro to charge the
13:10 15 plaintiff's class for the expense of its
13:10 16 professionals' time in pursuing this case?
13:10 17 **A. I don't know the answer to that.**
13:10 18 Q. Do you know how any damages on behalf of
13:10 19 the zero coupon note holders will be calculated?
13:10 20 MS. SAVETT: Objection as to form.
13:10 21 Calls for a legal conclusion.
13:10 22 **A. I'm -- I'm assuming that that will be**
13:10 23 **coordinated among our counsel.**
13:10 24 Q. (BY MS. PATRICK) Do you think that Stark
13:10 25 or the Staro funds are entitled to extra

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13:10 1 compensation because they've taken on the burden of
13:10 2 pursuing this case?
13:10 3 MS. SAVETT: Objection as to form and
13:10 4 calls for a legal conclusion.
13:11 5 **A. I don't -- I don't -- I mean, that would --**
13:11 6 **something that would have to be taken up with the**
13:11 7 **attorneys.**
13:11 8 Q. (BY MS. PATRICK) Have you paid any legal
13:11 9 fees to anybody in connection with the prosecution
13:11 10 of this case?
13:11 11 **A. I am not sure.**
13:11 12 Q. Who would know?
13:11 13 **A. Our counsel.**
13:11 14 Q. Okay. And did you file a claim in the
13:11 15 Enron bankruptcy?
13:11 16 MS. SAVETT: Objection as to form.
13:11 17 Calls for a legal conclusion and understanding.
13:11 18 **A. What was the question again?**
13:11 19 Q. (BY MS. PATRICK) Sir, let me just back up
13:11 20 for a second. You have a master's in business
13:11 21 administration, right?
13:11 22 **A. Yes.**
13:11 23 Q. And you have -- you're a chartered
13:11 24 financial analyst, right?
13:11 25 **A. Yes.**

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13:11 1 Q. And you know what a bankruptcy is, don't
13:11 2 you?
13:11 3 **A. Yes.**
13:11 4 Q. All right. Any doubt in your mind that on
13:11 5 behalf of your investors, you filed a proof of claim
13:11 6 to recover for them against Enron on the notes that
13:11 7 you purchased?
13:12 8 MS. SAVETT: Objection as to form.
13:12 9 Involves legal questions that he may not be capable
13:12 10 of answering. He's not a lawyer.
13:12 11 **A. You'll have to ask me the question again.**
13:12 12 Q. (BY MS. PATRICK) I'm fascinated by this.
13:12 13 Did you understand that when Enron went into
13:12 14 bankruptcy --
13:12 15 **A. I'm not an attorney.**
13:12 16 Q. I understand.
13:12 17 **A. I only understand basic legal terms. You**
13:12 18 **can think of me as a legal idiot if you want to.**
13:12 19 Q. No. I think of this as -- as something
13:12 20 different. I think you're perfectly capable of
13:12 21 answering this. As an investor, do you understand
13:12 22 that you have certain rights, whatever they are,
13:12 23 with regard to a bankrupt company?
13:12 24 **A. As an investor, I may not or -- or I may**
13:12 25 **have or may not have rights if the company files for**

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13:12 1 **bankruptcy. It could be just a bad investment.**
13:12 2 Q. Do you know whether, as a debt holder, you
13:12 3 are senior in the capital structure to the equity?
13:12 4 **A. Yes. I do know the answer to that.**
13:13 5 Q. What does it mean to be senior in the
13:13 6 capital structure to the equity?
13:13 7 **A. As a senior bondholder, I have a contract**
13:13 8 **with the company, and I have a claim on the**
13:13 9 **company's assets. The equity does not have a claim**
13:13 10 **on the company's assets. It's a residual claim**
13:13 11 **after all the liabilities of the company have been**
13:13 12 **satisfied, generally speaking.**
13:13 13 Q. And your claim on the company's assets,
13:13 14 once a company is in bankruptcy, is asserted how?
13:13 15 MS. SAVETT: Objection as to form.
13:13 16 **A. By filing a proof of claim.**
13:13 17 Q. (BY MS. PATRICK) Did you file a proof of
13:13 18 claim in the bankruptcy?
13:13 19 **A. I'm quite sure we did.**
13:13 20 Q. Do you know whether it has been produced?
13:13 21 **A. Whether the proof of claim has been**
13:13 22 **produced?**
13:13 23 Q. Yes.
13:13 24 **A. I don't know.**
13:13 25 Q. Who would have been charged with handling

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13:19 1 **A. We have done it, yes.**
13:19 2 Q. Okay. Have you done it more than five or
13:19 3 ten times?
13:19 4 **A. That's probably about the right ballpark.**
13:19 5 **We don't make it a major -- it's certainly not a**
13:19 6 **strategy that we've identified or something that we**
13:20 7 **intentionally go out to do. It's typically**
13:20 8 **something that -- that happens as we're trying to**
13:20 9 **pursue investments in any and all of our strategies.**
13:20 10 **It's just something that -- it's not a -- it's not**
13:20 11 **an intentional separate strategy that we invest in.**
13:20 12 Q. Just something that can be attractive, in
13:20 13 the right circumstances, to you?
13:20 14 **A. I believe so, yes.**
13:20 15 MS. PATRICK: Okay. I think that's
13:20 16 all I have. Let's take a two-minute break and come
13:20 17 right back. Let's go off the record.
13:20 18 THE VIDEOGRAPHER: We are off the
13:20 19 record at 3:15 p.m.
13:20 20 (A recess was taken.)
13:20 21 THE VIDEOGRAPHER: We are back on the
13:20 22 record at 3:19 p.m.
13:24 23 MS. PATRICK: Mr. Bobbs, thank you for
13:24 24 your time. I'm going to adjourn the deposition for
13:24 25 now and not pass you as a witness. That doesn't

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13:24 1 mean anything to you, but for your lawyers, I think
13:24 2 there are significant deficiencies in the document
13:24 3 production. I'm going to talk to you about them.
13:24 4 We don't have to fight about them now.
13:24 5 But I reserve my right to come back
13:25 6 and ask questions about the documents that we've
13:25 7 identified that have not been produced of this
13:25 8 witness or of a witness who is knowledgeable because
13:25 9 on some of the things that were within the scope of
13:25 10 the notice, such as supervision of the litigation
13:25 11 and so forth, he has not been as forthcoming as we
13:25 12 would have hoped. So we'll deal with that by letter
13:25 13 and follow up. And with that, I'll turn it over to
13:25 14 other counsel.
13:25 15 EXAMINATION
13:25 16 BY MR. QUINLAN:
13:25 17 Q. Okay. Mr. Bobbs, my name is Bob Quinlan.
13:25 18 I am an attorney for Alliance Capital Management. I
13:25 19 just have a few questions. I'm going to try to
13:25 20 avoid repetition, but I may have to refer back
13:25 21 briefly to some of your earlier answers to set the
13:25 22 stage.
13:25 23 I believe you told Ms. Patrick earlier
13:25 24 that in making the decision to -- to invest in
13:25 25 Enron, you relied, among other things, on Enron's

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13:25 1 audited financial statements; is that correct?
13:25 2 **A. Yes.**
13:25 3 Q. Is that something you normally rely upon in
13:25 4 making an investment decision, that is to say, a
13:25 5 company's audited financial statements?
13:26 6 **A. Absolutely.**
13:26 7 Q. In your experience in the industry, do most
13:26 8 financial analysts rely on audited financial
13:26 9 statements in making investment decisions?
13:26 10 **A. Yes.**
13:26 11 Q. In your professional opinion, is that an
13:26 12 appropriate thing to rely on?
13:26 13 **A. It's certainly an appropriate thing to rely**
13:26 14 **upon. I'm not sure if you're asking the question or**
13:26 15 **not, but it's -- it may not be solely the only thing**
13:26 16 **to rely upon.**
13:26 17 Q. I didn't ask solely, sir. I just said is
13:26 18 it an appropriate thing to rely upon.
13:26 19 **A. Yes.**
13:26 20 Q. Okay. Have you ever tried to do an
13:26 21 independent check on the accuracy of the audit of
13:26 22 audited financial statements?
13:26 23 **A. Repeat the question again.**
13:26 24 Q. Yes, sir. As a financial analyst, have you
13:26 25 ever tried to make an independent check as to the

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13:26 1 accuracy of an accounting firm's work on an audited
13:26 2 financial statement?
13:26 3 **A. I have not independently tried to do**
13:26 4 **that, no.**
13:26 5 Q. In your experience in the industry, do you
13:26 6 know of any instance of a financial analyst trying
13:27 7 to make an independent verification of the accuracy
13:27 8 of an accounting statement's certification of
13:27 9 audited financials?
13:27 10 **A. No.**
13:27 11 Q. Okay. After Staro made the initial
13:27 12 decision to invest in Enron securities, did you try
13:27 13 to continue to keep up with the developments
13:27 14 concerning Enron?
13:27 15 **A. Absolutely.**
13:27 16 Q. Do you recall, in the middle of August
13:27 17 2001, Jeffrey Skilling resigned from -- as CEO of
13:27 18 Enron?
13:27 19 **A. Yes.**
13:27 20 Q. Did you or anyone at Staro, to your
13:27 21 knowledge, consider liquidating your position in
13:27 22 Enron as a result of Mr. Skilling's resignation?
13:27 23 **A. We certainly -- we didn't consider**
13:27 24 **liquidating our position in Enron as a result of**
13:27 25 **solely Mr. Skilling's resignations, and if I recall,**

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13:33 1 (Requested text read.)
13:34 2 **A. It's going to have -- the same market**
13:34 3 **event's going to have the direct opposite impact.**
13:34 4 Q. (BY MR. QUINLAN) Thank you, sir. Let me
13:34 5 ask you to look briefly, if you would -- and, again,
13:34 6 I'm not going to repeat more than I have to, but
13:34 7 would you look briefly at what's previously marked
13:34 8 as Exhibit 137, and that's the zero coupon notes
13:34 9 offering memorandum.
13:34 10 **A. Okay.**
13:34 11 Q. And in particular, sir -- and, again,
13:34 12 you're certainly welcome to read more of this, if
13:34 13 you want to, to put it in context. But the part I
13:34 14 particularly want to ask you about begins at the
13:34 15 bottom of Page 27. You'll see it's Bates stamped in
13:34 16 the lower right corner ENE Staro 01121.
13:34 17 **A. Yeah.**
13:35 18 Q. And it continues to the first paragraph of
13:35 19 the following page.
13:35 20 **A. Okay.**
13:35 21 Q. Do you see there there's a reference to
13:35 22 global notes which are being -- which will be
13:35 23 deposited with the trustee as custodians for DTC?
13:35 24 **A. I -- I see the area. You -- would you like**
13:35 25 **me to take some time and read it or --**

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13:35 1 Q. Yes. I'd -- I'd particularly like you to
13:35 2 read that paragraph and the first of the following
13:35 3 page, but if you feel you need to read more to put
13:35 4 it in context, you're certainly welcome to do that.
13:35 5 And take all the time you need. I really have one
13:35 6 only fairly simple question, but take the time you
13:35 7 need, and let me know when you're ready.
13:35 8 **A. Okay.**
13:36 9 Q. My question is simply this, Mr. Bobbs. To
13:36 10 the best of your knowledge, did Staro ever
13:36 11 acquire -- withdrawn. To the best of your
13:36 12 knowledge, did Staro or any of the firms in which it
13:36 13 was the general partner, ever acquire an ownership
13:36 14 interest in the global notes deposited with the
13:36 15 trustee as custodian for DTC?
13:36 16 **A. To the best of my knowledge, no.**
13:36 17 MR. QUINLAN: Okay. At this time, I
13:36 18 have no further questions for Mr. Bobbs. I am not
13:36 19 prepared to close the deposition, both because of
13:36 20 the deficiencies in document production, which we've
13:36 21 discussed before with counsel -- but we don't have
13:36 22 to fight about that now. I know people have planes
13:36 23 to catch -- but also because Mr. Bobbs has
13:37 24 disclaimed knowledge to several very important areas
13:37 25 already in response to questions from Ms. Patrick.

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13:37 1 And I see no point in consuming
13:37 2 everyone's time by asking more questions on areas
13:37 3 where he has already said he's not knowledgeable;
13:37 4 therefore, we reserve all our rights. We do not
13:37 5 regard the deposition as closed. But having said
13:37 6 that, I have no further questions of Mr. Bobbs at
13:37 7 this time. Thank you for your time, Mr Bobbs.
13:37 8 THE WITNESS: Uh-huh.
13:37 9 EXAMINATION
13:37 10 BY MS. SHELBY:
13:37 11 Q. Mr. Bobbs, I'm Anne Shelby from Paul, Weiss
13:37 12 Rifkind, Wharton & Garrison, in New York City,
13:37 13 representing the Citigroup defendants, and I just
13:37 14 have a handful of questions for you concerning the
13:37 15 bank defendants in this action. Are you aware that
13:37 16 the bank defendants served a document request on the
13:37 17 Staro entity?
13:37 18 **A. No, I was not.**
13:37 19 Q. I have here the -- the first request for
13:38 20 production of documents from the bank defendants.
13:38 21 It's been marked in -- as Exhibit 1 previously.
13:38 22 Have you seen that document before?
13:38 23 **A. No, I have not.**
13:38 24 MR. QUINLAN: Is that being marked?
13:38 25 MS. SHELBY: It's already been marked

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13:38 1 as Exhibit 1.
13:38 2 MR. QUINLAN: Thank you.
13:38 3 Q. (BY MS. SHELBY) Did you take part in
13:38 4 preparing the response to this document request?
13:38 5 **A. I took part in providing documents related**
13:38 6 **to this case. Providing the response to this, no.**
13:38 7 MS. SAVETT: I'd like to say that he
13:39 8 produced what he had pursuant to instructions from
13:39 9 his counsel. He didn't see the particular document
13:39 10 requests, so I think that that's -- he answered that
13:39 11 earlier in the deposition. But I just want to make
13:39 12 it clear that he may have produced documents without
13:39 13 knowing they were pursuant to this request.
13:39 14 MS. SHELBY: Okay. I'd like to mark
13:39 15 this document as Exhibit 140 --
13:39 16 THE REPORTER: Eight.
13:39 17 MS. SHELBY: -- 8. Okay. Could I
13:39 18 have a sticker, please?
13:39 19 (Deposition Exhibit 148 was marked.)
13:39 20 MS. SHELBY: Thank you.
13:39 21 Q. (BY MS. SHELBY) There you go, sir
13:39 22 (indicating), and these are the responses and
13:39 23 objections of Staro to the bank defendants' document
13:39 24 request. Have you seen this document before?
13:39 25 **A. Have not.**

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13:45 1 defendants had been formally sued in this action?
13:45 2 MS. SAVETT: Objection as to form.
13:45 3 You're confusing things.
13:45 4 **A. We --**
13:45 5 MS. SAVETT: Excuse me. The question
13:45 6 is incomprehensible because I don't know whether
13:45 7 you're speaking about the broad fraud claim or just
13:45 8 the Section 11 claim, where he's the class
13:45 9 representative. So you'll have to explain -- you'll
13:45 10 have to ask a clearer question.
13:45 11 MS. SHELBY: Okay. Let me try again.
13:45 12 Q. (BY MS. SHELBY) In the consolidated
13:45 13 complaint that was filed in this action, the bank
13:45 14 defendants were added as defendants in this action.
13:45 15 **A. Uh-huh.**
13:45 16 Q. When did you become aware of that fact?
13:45 17 **A. I don't know. I don't recall the exact**
13:46 18 **timing of which I became aware of that fact.**
13:46 19 Q. Have you read the first amended
13:46 20 consolidated complaint, that is, the most current
13:46 21 complaint in this action?
13:46 22 MS. SAVETT: Objection.
13:46 23 **A. I've seen it and scanned it. To be able to**
13:46 24 **tell you that I read it word for word would be an**
13:46 25 **overstatement. I rely upon our attorneys to -- to**

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13:46 1 **do that.**
13:46 2 Q. (BY MS. SHELBY) Okay. Changing subjects,
13:46 3 when you were deciding whether or not to advise
13:46 4 Staro to invest in Enron securities, did you ever
13:46 5 meet with representatives of Enron?
13:46 6 **A. No, I did not.**
13:46 7 Q. Did you ever discuss Enron with any
13:46 8 analysts outside of Staro?
13:46 9 **A. I've had discussions regarding Enron with**
13:46 10 **analysts outside of Staro. Don't know if that was**
13:47 11 **prior to making our initial investment or shortly**
13:47 12 **thereafter or exactly what the timing of those**
13:47 13 **conversations were as it relates to the timing of**
13:47 14 **our investments.**
13:47 15 Q. Who did you speak with?
13:47 16 **A. Just generally speaking, sell-side equity**
13:47 17 **and fixed-income analysts.**
13:47 18 Q. Can you give me specific names of people
13:47 19 you spoke with?
13:47 20 **A. No.**
13:47 21 Q. Are you saying you don't remember the names
13:47 22 of the analysts you spoke with --
13:47 23 **A. That's correct.**
13:47 24 Q. -- concerning Enron?
13:47 25 **A. That is correct.**

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13:47 1 Q. Did you ever have any conversations with
13:47 2 any of the bank defendants concerning Enron
13:47 3 securities?
13:47 4 **A. No.**
13:47 5 Q. Did you ever attend any road shows?
13:47 6 **A. On Enron?**
13:47 7 Q. On Enron securities.
13:47 8 **A. No.**
13:47 9 Q. Do you believe that the bank transactions
13:48 10 with Enron affected the credit rating of Enron?
13:48 11 MS. SAVETT: Objection as to form.
13:48 12 **A. Restate the question again.**
13:48 13 Q. (BY MS. SHELBY) You've stated that you
13:48 14 understand that some of the bank defendants had
13:48 15 engaged in transactions with Enron. Do you believe
13:48 16 that those transactions affected the bond rating or
13:48 17 the credit rating of Enron?
13:48 18 MS. SAVETT: Objection as form.
13:48 19 **A. I believe that the fact that those**
13:48 20 **transactions were consummated had a -- eventually**
13:48 21 **had a very material impact on the credit rating of**
13:48 22 **Enron.**
13:48 23 MS. SHELBY: That's all I have.
13:48 24 MS. PATRICK: Here, Patrick. You can
13:49 25 sit where I am.

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13:49 1 (Off-the-record discussion.)
13:49 2 MS. SHELBY: Yeah. Before we --
13:49 3 before I hand off to mic, I just wanted to say that
13:49 4 I'm just adjourning our deposition on the same
13:49 5 grounds previously given.
13:49 6 EXAMINATION
13:49 7 BY MR. DE GRAVELLES:
13:49 8 Q. Good afternoon, Mr. Bobbs. My name is
13:49 9 Patrick de Gravelles, and I represent
13:49 10 Paulo Ferraz-Pereira, who is an outside director at
13:49 11 Enron. I have a few questions for you.
13:49 12 Very quickly, you said you were at
13:49 13 Northwestern Mutual, and you were involved in
13:50 14 private placements there; is that correct?
13:50 15 **A. Uh-huh.**
13:50 16 Q. Is that a yes?
13:50 17 **A. Yes. Sorry.**
13:50 18 Q. That's okay. Did Northwestern Mutual act
13:50 19 as an underwriter in any of those private
13:50 20 placements?
13:50 21 **A. I think it depends upon the specific**
13:50 22 **definition of "underwriter."**
13:50 23 Q. Well, give me your definition of an
13:50 24 underwriter, what you understand it to be.
13:50 25 **A. That we -- that we underwrite and -- and**

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13:55 1 Q. It -- it would be?
13:55 2 **A. I would think so, yeah, if you're selling**
13:55 3 **securities that could -- only qualified**
13:55 4 **institutional buyers can buy and you're selling them**
13:55 5 **into the market to non-QIVs, I think that's illegal.**
13:55 6 Q. I'm speaking after they have been
13:55 7 registered, for example, the zero coupons.
13:55 8 MS. SAVETT: Objection as to form.
13:55 9 **A. We've owned securities that were issued**
13:55 10 **pursuant to 144A that were subsequently --**
13:55 11 **subsequently became registered. We have sold those**
13:55 12 **securities to other broker/dealers to either exit**
13:55 13 **the position or manage our investment strategy.**
13:55 14 Q. (BY MR. DE GRAVELLES) And when those sales
13:55 15 were made, did you always provide or did you ever
13:55 16 provide any of the documentations necessary for an
13:55 17 exempt transaction?
13:55 18 MS. SAVETT: Objection as to form.
13:55 19 **A. To my -- to my knowledge, no. Once the**
13:56 20 **144A security was publicly registered, we sold it**
13:56 21 **out into the marketplace to a broker/dealer, and we**
13:56 22 **did not provide anything to them, other than the**
13:56 23 **details of the security we were selling to them.**
13:56 24 Q. (BY MR. DE GRAVELLES) Early on in your
13:56 25 testimony, Ms. Patrick asked you some questions

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13:56 1 about directors' obligations, and in your answers,
13:56 2 you referred to officers and directors.
13:56 3 **A. Uh-huh.**
13:56 4 Q. In your mind, what is the difference
13:56 5 between the obligations that an officer has and a
13:56 6 director has with respect to a publicly traded
13:56 7 corporation?
13:56 8 MS. SAVETT: Objection as to form.
13:56 9 Calls for a legal conclusion.
13:56 10 **A. Can you repeat the question?**
13:56 11 MR. DE GRAVELLES: I can have the
13:56 12 court reporter read it back.
13:56 13 (Requested text read.)
13:57 14 **A. Are you asking me, from a legal standpoint,**
13:57 15 **what the difference in obligations are between**
13:57 16 **officers and directors, or are you asking me,**
13:57 17 **generally speaking, what I think the differences are**
13:57 18 **between officers and directors?**
13:57 19 Q. (BY MR. DE GRAVELLES) I'm asking you for
13:57 20 all your understandings as to what those differences
13:57 21 are.
13:57 22 **A. To the extent there is a legal difference,**
13:57 23 **I don't know. My own opinion is really not much. I**
13:57 24 **believe that officers of companies are more involved**
13:57 25 **in the -- kind of the day-to-day activities of**

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13:57 1 **running the business. However, I believe that both**
13:58 2 **officers and directors are equally responsible for**
13:58 3 **knowing the more important aspects of a company's**
13:58 4 **financial affairs and -- and the strategic**
13:58 5 **initiatives that are being pursued.**
13:58 6 Q. Have you ever served as a director on a
13:58 7 publicly -- on the board of a publicly held
13:58 8 corporation?
13:58 9 **A. No, I have not.**
13:58 10 Q. Has anyone at Staro, to your knowledge,
13:58 11 served as a director of a -- on the board of a
13:58 12 publicly held corporation?
13:58 13 **A. I don't know the answer to that.**
13:58 14 Q. Based on your understanding of the
13:58 15 difference -- difference between officers and
13:58 16 directors, would you reasonably expect an officer or
13:58 17 director to spend more time on the affairs of the
13:58 18 corporation?
13:59 19 MS. SAVETT: Objection as to form.
13:59 20 **A. Define what affairs.**
13:59 21 Q. (BY MR. DE GRAVELLES) All the affairs of
13:59 22 the corporation.
13:59 23 **A. Again, I don't -- my general opinion is**
13:59 24 **that I would not expect the directors to know the**
13:59 25 **day-to-day goings on in a major corporation such as**

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13:59 1 **Enron. When it comes to big strategic decisions and**
13:59 2 **direction that the corporation is taking involving**
13:59 3 **off-balance-sheet special-purpose entity**
13:59 4 **transactions, such as the types that are described**
13:59 5 **in the -- and in the case of Enron, my general**
13:59 6 **opinion is I would expect the directors to be fully**
13:59 7 **aware of the direction of that -- those types of**
13:59 8 **activities that are going on with the company.**
13:59 9 Q. And in your estimation, how would those
13:59 10 directors gain their awareness?
14:00 11 **A. They would gain their awareness through**
14:00 12 **asking questions, being generally aware of what's --**
14:00 13 **asking questions of the -- of the officers, being**
14:00 14 **made aware in board meetings of what's going on,**
14:00 15 **through -- through third-party contacts outside**
14:00 16 **of -- of the company.**
14:00 17 MR. DE GRAVELLES: Let's change the
14:00 18 tape.
14:00 19 THE VIDEOGRAPHER: We are off the
14:00 20 record at 3:55 p.m.
14:02 21 (A recess was taken.)
14:02 22 BEGINNING OF TAPE NUMBER 6:
14:02 23 THE VIDEOGRAPHER: We are back on the
14:02 24 record at 3:57 p.m.
14.02 25 Q. In your estimation, what third-party

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14:07 1 MR. STOCK: Yeah. Exhibit 141 or
14:07 2 Exhibit 139 also has that, and there's a key which
14:08 3 has names of brokers on it.
14:08 4 MS. SAVETT: And this one might have
14:08 5 some information.
14:08 6 **A. Okay. I -- I'm not involved in producing**
14:08 7 **these, so I'm -- it's, again, someone in the back**
14:08 8 **office, combined -- in combination or conjunction**
14:08 9 **with our counsel.**
14:08 10 **But my general belief is that, for**
14:08 11 **example, on this Exhibit 141, at the top of the**
14:08 12 **second page, 1957, there's a section there on --**
14:08 13 **where the code is Stark International,**
14:08 14 **Deutsche Banc, and I would think that that means**
14:08 15 **that we purchased from Deutsche Bank, for example,**
14:08 16 **on 10/31, 1.1 million bonds at a price of 48.**
14:08 17 Q. (BY MR. DE GRAVELLES) And as to those
14:08 18 purchases for which there is no -- are there
14:08 19 purchases on -- in that exhibit where there are no
14:08 20 names associated with them?
14:08 21 **A. I don't -- I don't know. I haven't looked**
14:09 22 **at it, but I -- I don't believe so. I believe this**
14:09 23 **would -- you would be able to tell who we purchased**
14:09 24 **securities from just from using this.**
14:09 25 Q. And does that include 144A and 144

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14:09 1 purchases?
14:09 2 **A. Yes.**
14:09 3 Q. Ms. Shelby asked you some questions --
14:09 4 well, let me -- let me back up. Did you do any
14:09 5 research to find out if entities that go by the
14:09 6 initials JMG or TQA were involved in the sale of
14:09 7 any -- in the -- in the chain of sales of bonds that
14:09 8 ended up in Staro's hands?
14:09 9 **A. I'm sorry. Could you repeat the question?**
14:09 10 Q. Sure. Did you ever perform any research to
14:09 11 figure out if entities that generally go by the
14:09 12 initials JMG or TQA were involved in the chain of
14:09 13 sales of bonds that ended up in Staro's hands?
14:09 14 **A. Yeah. You lost me. You'll have to -- to**
14:09 15 **start one more time.**
14:10 16 Q. All right. Okay. Let's start from the
14:10 17 beginning. Did Staro purchase any notes directly
14:10 18 from Enron?
14:10 19 **A. Directly from Enron?**
14:10 20 Q. Right.
14:10 21 MS. SAVETT: Objection as to the form.
14:10 22 **A. I don't know. We -- we purchased**
14:10 23 **securities issued by Enron, yes.**
14:10 24 Q. (BY MR. DE GRAVELLES) That's not what I
14:10 25 asked. What I'm asking is: When you purchased your

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14:10 1 notes, did you purchase any from Enron itself, or
14:10 2 was there always some intermediary in between you
14:10 3 and Enron?
14:10 4 **A. I don't believe it was ever Enron on the**
14:10 5 **other end of the phone, no.**
14:10 6 Q. Okay. That's my question. Now, on the
14:10 7 other end of the phone -- and sometimes, you agree,
14:10 8 there were a chain of phone calls, so to speak,
14:10 9 phone transactions, that led to Staro purchasing a
14:10 10 given note, correct?
14:10 11 **A. Yeah. We never do it in person, or I don't**
14:11 12 **know that we've ever done it in person.**
14:11 13 Q. Okay. That's -- that's not -- that's not
14:11 14 my question.
14:11 15 **A. It usually involves a phone.**
14:11 16 Q. For any of -- for example, Deutsche Banc
14:11 17 listed on that exhibit in front of you --
14:11 18 **A. Uh-huh.**
14:11 19 Q. -- 141 --
14:11 20 **A. Uh-huh.**
14:11 21 Q. -- is it possible that Deutsche Banc also
14:11 22 purchased that note from someone else prior to
14:11 23 selling it to Staro?
14:11 24 **A. I guess it's possible, yes.**
14:11 25 Q. Did you ever do any research to find out

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14:11 1 who was in that chain?
14:11 2 **A. No.**
14:11 3 Q. All right. Do you believe it's incumbent
14:11 4 upon Staro, as a general partner, to seek all relief
14:11 5 that's available to it in this action?
14:11 6 MS. SAVETT: Objection as to form.
14:11 7 Calls for a legal conclusion.
14:11 8 Q. (BY MR. DE GRAVELLES) You can answer.
14:11 9 **A. Okay. Ask the question again.**
14:11 10 Q. We'll move on. I think it's getting late
14:11 11 in the day.
14:12 12 THE VIDEOGRAPHER: Mr. Bobbs, could
14:12 13 you move forward?
14:12 14 THE WITNESS: Sure.
14:12 15 THE VIDEOGRAPHER: Thank you.
14:12 16 Q. (BY MR. DE GRAVELLES) Ms. Shelby asked you
14:12 17 some questions about naming the banks in the debt
14:12 18 offerings. Are you aware that the banks were not
14:12 19 named as to this offering?
14:12 20 **A. Offering meaning this --**
14:12 21 Q. The zeros.
14:12 22 MS. SAVETT: Do you mean not named in
14:12 23 the Section 11 claim?
14:12 24 MR. DE GRAVELLES: Yes.
14:12 25 **A. Yes. I am aware that the banks were not**

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14:18 1 STATE OF TEXAS X
14:18 2 COUNTY OF DALLAS X
14:18 3 I, LISA M. DURHAM, Certified Shorthand
14:18 4 Reporter duly commissioned and qualified in and for
14:18 5 the State of Texas, do hereby certify that there
14:18 6 came before me on the 10th day of September, 2003,
14:18 7 at the Pfister Hotel, located at 424 East Wisconsin
14:18 8 Avenue, in the City of Milwaukee, County of
14:18 9 Milwaukee, State of Wisconsin, the following named
14:18 10 person, to-wit: DONALD TRENT BOBBS, who was duly
14:18 11 sworn to testify the truth, the whole truth and
14:18 12 nothing but the truth of his knowledge touching and
14:18 13 concerning the matters in controversy in this cause;
14:18 14 that he was thereupon examined upon his oath and his
14:18 15 examination reduced to typewriting under my
14:18 16 supervision; that the deposition is a true record of
14:18 17 the testimony given by the witness, and signature of
14:18 18 the witness is to be before any Notary Public.
14:18 19 I further certify that I am neither
14:18 20 attorney for, nor related to or employed by, any of
14:18 21 the parties to the action in which this deposition
14:18 22 is taken, and further that I am not a relative or
14:18 23 employee of any attorney or counsel employed by
14:18 24 the parties hereto, or financially interested in
14:18 25 the action.

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14:18 1 Given under my hand and seal of office on
14:18 2 this the 15th day of September, A.D., 2003.
14:18 3
14:18 4 _____
LISA M. DURHAM, CSR 6651
14:18 5 Alpha Reporting Services, Inc.
4144 North Central Expressway
14:18 6 Suite 240
Dallas, Texas 75204
14:18 7 (214) 321-5599
(214) 321-1922 Facsimile
14:18 8 (888) 667-DEPO Toll Free
14:18 9
14:18 10 My CSR certification expires: 12-31-03
14:18 11
12
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Exhibit B

Schedule of All Enron Secur ties Transactions in Class Period

Entity.Broker Key

SD.BS	Shepherd Trading - Bear Stearns
RT.BS	Reliant Trading - Bear Stearns
SD2.BA	Shepherd Trading/Stat Arb - Bear Stearns
RT2.BA	Reliant Trading/Stat Arb - Bear Stearns
SF.DMG	Shepherd Fund - Deutsche Bank
OS.DMG	Stark Int'l - Deutsche Bank

Swap Entities

SS.NW	Stark Swap - Deutsche Bank
SW.NW	Shepherd Swap - Deutsche Bank
SS.FU	Stark Swap - First Union
SW.FU	Shepherd Swap - First Union
SS.NA	Stark Swap - Nations Bank
SW.NA	Shepherd Swap - Nations Bank

Bobbs
EXHIBIT NO. 141
9-10-03
L. DURHAM

ENRON
bonds

	Date	Quantity	Price
OS.DMG	ENE0.0	ENRON CORR 0.0% CV BOND	
PUR	10/31/01	1,100,000	$48.000
SAL	10/31/01	-500,000	$47.938
PUR	11/01/01	5,000,000	$45.750
SAL	11/05/01	-5,600,000	$43.250
SF.DMG	ENE0.0	ENRON CORR 0.0% CV BOND	
PUR	10/31/01	1,100,000	$48.000
SAL	10/31/01	-500,000	$47.938
PUR	11/01/01	5,000,000	$45.750
SS.FU	ENE0.0	ENRON CORR 0.0% CV BOND	
PUR	10/22/01	2,500,000	$57.500
SAL	10/31/01	-1,000,000	$47.000
SS.NA	ENE0.0	ENRON CORR 0.0% CV BOND	
PUR	10/09/01	7,500,000	$59.000
SD.BS	ENE0.0	ENRON CORR 0.0% CV BOND	
PUR	09/27/01	2,500,000	$58.750
PUR	10/05/01	5,000,000	$59.500
SAL	10/09/01	-7,500,000	$59.000
PUR	10/18/01	2,500,000	$58.250
PUR	10/22/01	1,250,000	$55.750
PUR	10/22/01	2,500,000	$55.750
PUR	10/24/01	5,000,000	$52.750
PUR	10/25/01	2,500,000	$51.625
PUR	10/25/01	2,500,000	$51.875
SAL	10/25/01	-2,500,000	$51.625
PUR	10/26/01	5,000,000	$50.500
SAL	10/26/01	-5,000,000	$51.500
PUR	10/29/01	1,500,000	$49.750
SAL	10/30/01	-1,000,000	$46.938
PUR	11/02/01	750,000	$42.750
PUR	11/07/01	1,250,000	$37.000
PUR	11/09/01	1,000,000	$50.000
PUR	11/09/01	1,000,000	$42.000
SAL	11/09/01	-1,000,000	$47.000
SAL	11/09/01	-1,000,000	$50.000
SAL	11/12/01	-1,250,000	$51.000
SAL	11/13/01	-500,000	$50.500
SAL	11/13/01	-1,000,000	$50.250
SAL	11/13/01	-500,000	$50.000
PUR	11/20/01	2,500,000	$39.000
PUR	11/20/01	3,000,000	$36.938

SAL	11/20/01	-500,000	$45.500
PUR	11/21/01	1,000,000	$36.000
PUR	11/21/01	2,000,000	$35.188
PUR	11/21/01	500,000	$33.500
PUR	11/21/01	1,000,000	$34.500
PUR	11/21/01	1,500,000	$35.250
PUR	11/27/01	250,000	$36.063
SAL	11/27/01	-2,500,000	$35.000

SS.NW	ENE0.0	ENRON CORR 0.0% CV BOND	
PUR	10/24/01	3,750,000	$55.500
PUR	10/25/01	5,000,000	$52.500
PUR	10/26/01	2,500,000	$52.000
PUR	10/30/01	1,500,000	$49.500
PUR	11/05/01	750,000	$43.250
PUR	11/05/01	5,600,000	$43.250
PUR	11/08/01	13,500,000	$43.250
PUR	11/08/01	1,250,000	$42.500
SAL	11/08/01	-13,500,000	$43.250
SAL	11/14/01	-1,250,000	$46.000
SAL	11/14/01	-500,000	$49.000
SAL	11/16/01	-1,500,000	$49.500
PUR	11/21/01	5,000,000	$37.000
PUR	11/26/01	6,000,000	$35.250

SW.NA	ENE0.0	ENRON CORR 0.0% CV BOND	
PUR	10/09/01	7,500,000	$59.000

RT.BS	ENE0.0	ENRON CORR 0.0% CV BOND	
PUR	09/27/01	2,500,000	$58.750
PUR	10/05/01	5,000,000	$59.500
SAL	10/09/01	-7,500,000	$59.000
PUR	10/18/01	2,500,000	$58.250
PUR	10/22/01	1,250,000	$55.750
PUR	10/22/01	2,500,000	$55.750
SAL	10/22/01	-2,500,000	$57.500
PUR	10/24/01	5,000,000	$52.750
SAL	10/24/01	-3,750,000	$55.500
PUR	10/25/01	2,500,000	$51.625
PUR	10/25/01	2,500,000	$51.875
SAL	10/25/01	-5,000,000	$52.500
SAL	10/25/01	-2,500,000	$51.625
PUR	10/26/01	5,000,000	$50.500
SAL	10/26/01	-2,500,000	$52.000
SAL	10/26/01	-5,000,000	$51.500
PUR	10/29/01	1,500,000	$49.750
SAL	10/30/01	-1,000,000	$46.938
SAL	10/30/01	-1,500,000	$49.500
PUR	10/31/01	1,000,000	$47.000
PUR	11/02/01	750,000	$42.750
SAL	11/05/01	-750,000	$43.250
PUR	11/07/01	1,250,000	$37.000

SAL	11/08/01	-1,250,000	$42.500
PUR	11/09/01	1,000,000	$50.000
PUR	11/09/01	1,000,000	$42.000
SAL	11/09/01	-1,000,000	$50.000
SAL	11/09/01	-1,000,000	$47.000
SAL	11/12/01	-1,250,000	$51.000
SAL	11/13/01	-500,000	$50.500
SAL	11/13/01	-1,000,000	$50.250
SAL	11/13/01	-500,000	$50.000
PUR	11/13/01	1,250,000	$46.000
PUR	11/14/01	500,000	$49.000
PUR	11/16/01	1,500,000	$49.500
PUR	11/20/01	2,500,000	$39.000
PUR	11/20/01	3,000,000	$36.938
SAL	11/20/01	-500,000	$45.500
PUR	11/21/01	2,000,000	$35.188
PUR	11/21/01	500,000	$33.500
PUR	11/21/01	1,500,000	$35.250
PUR	11/21/01	1,000,000	$34.500
PUR	11/21/01	1,000,000	$36.000
SAL	11/21/01	-5,000,000	$37.000
SAL	11/26/01	-6,000,000	$35.250
PUR	11/27/01	250,000	$36.063
SAL	11/27/01	-2,500,000	$35.000

SW.NW	ENE0.0A	ENRON CORP 0.0% CV BOND 144A	
PUR	03/26/01	12,500,000	$59.000
PUR	04/04/01	7,500,000	$59.250
SAL	04/04/01	-7,150,000	$59.500
SAL	04/04/01	-7,150,000	$59.500
SAL	05/31/01	-4,500,000	$59.500
PUR	06/01/01	4,500,000	$59.500

SF.DMG	ENE0.0A	ENRON CORP 0.0% CV BOND 144A	
PUR	05/30/01	5,000,000	$59.530
SAL	05/30/01	-5,000,000	$59.530
PUR	05/31/01	4,500,000	$59.500
PUR	06/01/01	10,000,000	$59.706
SAL	06/01/01	-10,000,000	$59.706
SAL	06/01/01	-4,500,000	$59.500

SS.FU	ENE0.0A	ENRON CORP 0.0% CV BOND 144A	
PUR	06/13/01	7,500,000	$61.250

SS.NW	ENE0.0A	ENRON CORP 0.0% CV BOND 144A	
PUR	03/26/01	12,500,000	$59.000
PUR	04/04/01	7,500,000	$59.250
SAL	04/04/01	-7,150,000	$59.500
SAL	04/04/01	-7,150,000	$59.500
SAL	05/31/01	-4,500,000	$59.500
PUR	06/01/01	4,500,000	$59.500

SD.BS	ENE0.0A	ENRON CORP 0.0% CV BOND 144A	
PUR	03/22/01	12,500,000	$58.956

SAL	03/26/01	-12,500,000	$59.000
SAL	04/04/01	-7,500,000	$59.250
PUR	04/04/01	7,500,000	$59.820
PUR	06/12/01	7,500,000	$59.703
SAL	06/13/01	-7,500,000	$61.250
PUR	07/26/01	5,000,000	$59.375
SAL	07/27/01	-5,000,000	$59.375
SW.FU	ENE0.0A	ENRON CORP 0.0% CV BOND 144A	
PUR	06/13/01	7,500,000	$61.250
OS.DMG	ENE0.0A	ENRON CORP 0.0% CV BOND 144A	
PUR	05/30/01	5,000,000	$59.530
SAL	05/30/01	-5,000,000	$59.530
PUR	05/31/01	4,500,000	$59.500
PUR	06/01/01	10,000,000	$59.706
SAL	06/01/01	-10,000,000	$59.706
SAL	06/01/01	-4,500,000	$59.500
RT.BS	ENE0.0A	ENRON CORP 0.0% CV BOND 144A	
PUR	03/22/01	12,500,000	$58.956
SAL	03/26/01	-12,500,000	$59.000
SAL	04/04/01	-7,500,000	$59.250
PUR	04/04/01	7,500,000	$59.820
PUR	06/12/01	7,500,000	$59.703
SAL	06/13/01	-7,500,000	$61.250
PUR	07/26/01	5,000,000	$59.375
SAL	07/27/01	-5,000,000	$59.375
SD.BS	ENE6.75	ENRON CORP 6.75% BOND	
SAL	10/30/01	-1,000,000	$75.500
RT.BS	ENE6.75	ENRON CORP 6.75% BOND	
SAL	10/30/01	-1,000,000	$75.500

ENRON
stock

	Date	Quantity	Price
SD.BS	ENE	ENRON CORP	
PUR	12/15/98	10,000	$53.375
SAL	12/16/98	-10,000	$55.000
RT.BS	ENE	ENRON CORP	
PUR	12/15/98	10,000	$53.375
SAL	12/16/98	-10,000	$55.000
SD2.BA	ENE.SA	ENRON CORP COM	
PUR	10/25/01	600	$16.990
SAL	11/07/01	-600	$8.180
RT2.BA	ENE.SA	ENRON CORP COM	
PUR	10/25/01	600	$16.990
SAL	11/07/01	-600	$8.180
SF.DMG	ENE1	ENRON CORP	
SAL	05/11/01	-26,500	$57.850
PUR	05/11/01	12,500	$58.387
PUR	05/14/01	14,000	$58.200
SS.NW	ENE1	ENRON CORP	
SAL	04/10/01	-28,050	$58.820
SAL	04/11/01	-5,000	$58.820
SAL	04/19/01	-5,000	$61.620
SAL	05/14/01	-14,000	$58.200
SAL	05/24/01	-2,500	$55.350
SAL	05/31/01	-8,650	$53.230
SAL	06/04/01	-9,400	$53.040
PUR	06/07/01	7,500	$52.910
PUR	06/07/01	10,000	$52.330
PUR	06/08/01	5,000	$50.520
PUR	06/28/01	2,500	$46.720
SAL	07/02/01	-2,500	$49.000
SAL	07/09/01	-5,000	$49.060
PUR	07/23/01	2,500	$48.160
PUR	07/25/01	20,000	$43.240
PUR	07/26/01	2,500	$44.960
PUR	07/27/01	2,150	$46.840
PUR	07/30/01	2,500	$46.100
PUR	08/16/01	6,500	$40.250
PUR	08/17/01	1,500	$36.850
PUR	08/22/01	2,500	$36.880
PUR	08/23/01	2,550	$37.260
PUR	09/04/01	2,450	$34.990
PUR	09/06/01	2,500	$32.360
PUR	09/18/01	7,450	$30.670
SAL	11/01/01	-62,500	$13.900

SAL	11/01/01	-450,000	$11.960
SAL	11/21/01	-1,100,000	$6.990
OS.DMG	ENE1	ENRON CORP	
SAL	05/11/01	-26,500	$57.850
PUR	05/11/01	12,500	$58.387
PUR	05/14/01	14,000	$58.200
SS.FU	ENE1	ENRON CORP	
SAL	06/13/01	-8,650	$50.370
PUR	09/05/01	2,500	$35.000
PUR	09/18/01	2,550	$30.670
PUR	09/19/01	3,600	$28.080
SAL	11/01/01	-50,000	$11.990
SD.BS	ENE1	ENRON CORP	
SAL	03/22/01	-17,250	$52.480
SAL	04/04/01	-10,800	$54.280
SAL	04/10/01	-5,000	$58.200
PUR	04/10/01	28,050	$58.820
PUR	04/11/01	5,000	$58.820
SAL	04/18/01	-5,000	$61.235
PUR	04/19/01	5,000	$61.620
SAL	05/23/01	-2,500	$55.730
PUR	05/24/01	2,500	$55.350
SAL	05/30/01	-8,650	$52.810
PUR	05/31/01	7,500	$52.800
PUR	05/31/01	8,650	$53.230
SAL	06/01/01	-14,400	$52.725
PUR	06/01/01	5,000	$52.720
SAL	06/01/01	-7,500	$52.910
PUR	06/04/01	9,400	$53.040
PUR	06/06/01	10,000	$52.160
PUR	06/07/01	5,000	$51.543
SAL	06/07/01	-10,000	$52.330
SAL	06/08/01	-5,000	$50.520
SAL	06/12/01	-8,650	$50.590
PUR	06/13/01	8,650	$50.370
PUR	06/27/01	2,500	$46.048
SAL	06/28/01	-2,500	$46.720
SAL	06/29/01	-2,500	$49.530
PUR	07/02/01	2,500	$49.000
SAL	07/06/01	-5,000	$51.400
PUR	07/09/01	5,000	$49.060
PUR	07/20/01	2,500	$48.070
SAL	07/23/01	-2,500	$48.160
PUR	07/24/01	20,000	$42.800
PUR	07/25/01	2,500	$43.150
SAL	07/25/01	-20,000	$43.240
PUR	07/26/01	5,000	$44.930
SAL	07/26/01	-2,850	$44.970
SAL	07/26/01	-2,500	$44.960
PUR	07/27/01	2,500	$45.850
SAL	07/27/01	-2,150	$46.840

SAL	07/30/01	-2,500	$46.100
PUR	08/15/01	4,000	$37.207
PUR	08/15/01	2,500	$38.800
PUR	08/16/01	1,500	$37.000
SAL	08/16/01	-6,500	$40.250
SAL	08/17/01	-1,500	$36.850
PUR	08/21/01	2,500	$37.000
PUR	08/22/01	2,500	$36.800
SAL	08/22/01	-2,500	$36.880
SAL	08/23/01	-2,500	$37.260
PUR	08/31/01	2,500	$35.000
PUR	09/04/01	2,500	$35.000
SAL	09/04/01	-2,500	$34.990
PUR	09/05/01	2,500	$33.280
SAL	09/05/01	-2,500	$35.000
SAL	09/06/01	-2,500	$32.360
PUR	09/17/01	10,000	$30.953
PUR	09/18/01	7,500	$29.503
SAL	09/18/01	-7,450	$30.670
SAL	09/18/01	-2,550	$30.670
SAL	09/19/01	-3,600	$28.080
PUR	09/25/01	5,000	$27.000
SAL	10/03/01	-5,000	$33.720
SAL	10/09/01	-2,000	$33.770
SAL	10/12/01	-2,500	$35.940
PUR	10/15/01	2,500	$33.150
PUR	10/22/01	2,500	$20.250
PUR	10/24/01	4,500	$16.000
SAL	10/30/01	-8,900	$12.091
SAL	10/31/01	-62,500	$12.869
SAL	11/01/01	-15,000	$12.784
PUR	11/01/01	450,000	$11.960
PUR	11/01/01	50,000	$11.990
SAL	11/01/01	-30,000	$12.002
SAL	11/02/01	-27,500	$11.416
SAL	11/05/01	-22,500	$12.023
SAL	11/07/01	-50,000	$8.557
SAL	11/09/01	-30,000	$8.583
PUR	11/13/01	75,002	$9.425
SAL	11/15/01	-75,000	$9.733
SAL	11/16/01	-67,300	$8.967
PUR	11/20/01	50,000	$6.900
SAL	11/20/01	-29,990	$7.008
SAL	11/21/01	-575,000	$5.367
SAL	11/21/01	-3,000	$6.290
PUR	11/21/01	900,000	$6.990
SAL	11/23/01	-125,000	$4.996
SAL	11/23/01	-14,500	$5.120
SAL	11/26/01	-100,000	$3.966
PUR	11/26/01	10,000	$4.050
PUR	11/27/01	50,000	$3.906

SW.FU	ENE1	ENRON CORP	
SAL	06/13/01	-8,650	$50.370

PUR	09/05/01	2,500	$35.000
PUR	09/18/01	2,550	$30.670
PUR	09/19/01	3,600	$28.080
SAL	11/01/01	-50,000	$11.990

SW.NW	ENE1	ENRON CORP	
SAL	04/10/01	-28,050	$58.820
SAL	04/11/01	-5,000	$58.820
SAL	04/19/01	-5,000	$61.620
SAL	05/14/01	-14,000	$58.200
SAL	05/24/01	-2,500	$55.350
SAL	05/31/01	-8,650	$53.230
SAL	06/04/01	-9,400	$53.040
PUR	06/07/01	7,500	$52.910
PUR	06/07/01	10,000	$52.330
PUR	06/08/01	5,000	$50.520
PUR	06/28/01	2,500	$46.720
SAL	07/02/01	-2,500	$49.000
SAL	07/09/01	-5,000	$49.060
PUR	07/23/01	2,500	$48.160
PUR	07/25/01	20,000	$43.240
PUR	07/26/01	2,500	$44.960
PUR	07/27/01	2,150	$46.840
PUR	07/30/01	2,500	$46.100
PUR	08/16/01	6,500	$40.250
PUR	08/17/01	1,500	$36.850
PUR	08/22/01	2,500	$36.880
PUR	08/23/01	2,500	$37.260
PUR	09/04/01	2,500	$34.990
PUR	09/06/01	2,500	$32.360
PUR	09/18/01	7,450	$30.670
SAL	11/01/01	-450,000	$11.960
SAL	11/21/01	-900,000	$6.990

RT.BS	ENE1	ENRON CORP	
SAL	03/22/01	-17,250	$52.480
SAL	04/04/01	-10,800	$54.280
SAL	04/10/01	-5,000	$58.200
PUR	04/10/01	28,050	$58.820
PUR	04/11/01	5,000	$58.820
SAL	04/18/01	-5,000	$61.235
PUR	04/19/01	5,000	$61.620
SAL	05/23/01	-2,500	$55.730
PUR	05/24/01	2,500	$55.350
SAL	05/30/01	-8,650	$52.810
PUR	05/31/01	7,500	$52.800
PUR	05/31/01	8,650	$53.230
SAL	06/01/01	-14,400	$52.725
PUR	06/01/01	5,000	$52.720
SAL	06/01/01	-7,500	$52.910
PUR	06/04/01	9,400	$53.040
PUR	06/06/01	10,000	$52.160
PUR	06/07/01	5,000	$51.543
SAL	06/07/01	-10,000	$52.330

SAL	06/08/01	-5,000	$50.520
SAL	06/12/01	-8,650	$50.590
PUR	06/13/01	8,650	$50.370
PUR	06/27/01	2,500	$46.048
SAL	06/28/01	-2,500	$46.720
SAL	06/29/01	-2,500	$49.530
PUR	07/02/01	2,500	$49.000
SAL	07/06/01	-5,000	$51.400
PUR	07/09/01	5,000	$49.060
PUR	07/20/01	2,500	$48.070
SAL	07/23/01	-2,500	$48.160
PUR	07/24/01	20,000	$42.800
PUR	07/25/01	2,500	$43.150
SAL	07/25/01	-20,000	$43.240
PUR	07/26/01	5,000	$44.930
SAL	07/26/01	-2,850	$44.970
SAL	07/26/01	-2,500	$44.960
PUR	07/27/01	2,500	$45.850
SAL	07/27/01	-2,150	$46.840
SAL	07/30/01	-2,500	$46.100
PUR	08/15/01	4,000	$37.207
PUR	08/15/01	2,500	$38.800
PUR	08/16/01	1,500	$37.000
SAL	08/16/01	-6,500	$40.250
SAL	08/17/01	-1,500	$36.850
PUR	08/21/01	2,500	$37.000
PUR	08/22/01	2,500	$36.800
SAL	08/22/01	-2,500	$36.880
SAL	08/23/01	-2,550	$37.260
PUR	08/31/01	2,500	$35.000
PUR	09/04/01	2,500	$35.000
SAL	09/04/01	-2,450	$34.990
PUR	09/05/01	2,500	$33.280
SAL	09/05/01	-2,500	$35.000
SAL	09/06/01	-2,500	$32.360
PUR	09/17/01	10,000	$30.953
PUR	09/18/01	7,500	$29.503
SAL	09/18/01	-7,450	$30.670
SAL	09/18/01	-2,550	$30.670
SAL	09/19/01	-3,600	$28.080
PUR	09/25/01	5,000	$27.000
SAL	10/03/01	-5,000	$33.720
SAL	10/09/01	-3,000	$33.770
SAL	10/12/01	-2,500	$35.940
PUR	10/15/01	2,500	$33.150
PUR	10/22/01	2,500	$20.250
PUR	10/24/01	5,500	$16.000
SAL	10/30/01	-8,900	$12.091
SAL	10/31/01	-62,500	$12.869
PUR	11/01/01	450,000	$11.960
PUR	11/01/01	50,000	$11.990
PUR	11/01/01	62,500	$13.900
SAL	11/01/01	-30,000	$12.002
SAL	11/01/01	-15,000	$12.784

SAL	11/02/01	-27,500	$11.416
SAL	11/05/01	-22,500	$12.023
SAL	11/07/01	-50,000	$8.557
SAL	11/09/01	-30,000	$8.583
PUR	11/13/01	74,998	$9.425
SAL	11/15/01	-75,000	$9.733
SAL	11/16/01	-67,300	$8.967
PUR	11/20/01	50,000	$6.900
SAL	11/20/01	-30,010	$7.008
SAL	11/21/01	-575,000	$5.367
PUR	11/21/01	1,100,000	$6.990
SAL	11/21/01	-3,000	$6.290
SAL	11/23/01	-14,500	$5.120
SAL	11/23/01	-125,000	$4.996
PUR	11/26/01	80,000	$4.124
PUR	11/26/01	10,000	$4.050
PUR	11/27/01	50,000	$3.906
SAL	11/27/01	-175,000	$4.396

SD.BS	ENE2	ENRON CORP	
SAL	07/09/01	-3,125	$49.700
PUR	07/10/01	3,125	$49.060
PUR	07/20/01	3,125	$48.360
SAL	07/23/01	-3,125	$48.160

SW.FU	ENE2	ENRON CORP	
SAL	07/10/01	-3,125	$49.060
PUR	07/23/01	3,125	$48.160

SS.FU	ENE2	ENRON CORP	
SAL	07/10/01	-9,375	$49.060
PUR	07/23/01	9,375	$48.160

RT.BS	ENE2	ENRON CORP	
SAL	07/09/01	-9,375	$49.700
PUR	07/10/01	9,375	$49.060
PUR	07/20/01	9,375	$48.360
SAL	07/23/01	-9,375	$48.160

SW.NW	EXG	ENRON CORP 7.0% CV PREFERRED	
SAL	03/09/00	-2,352	$19.875
SAL	03/20/00	-3,000	$19.250
SAL	03/21/00	-15,518	$18.625
SAL	03/23/00	-50,490	$19.500

SD.BS	EXG	ENRON CORP 7.0% CV PREFERRED	
PUR	08/10/99	15,000	$22.250
PUR	08/11/99	4,500	$22.500
PUR	08/11/99	45,360	$22.476
PUR	08/11/99	15,000	$22.500
PUR	09/20/99	1,500	$23.750
SAL	10/06/99	-10,000	$21.625

ENRON

	Date	Quantity		Price
SS.NW	ENE0.0B04	ENE0.0 ASCOT 180BP 02/07/04		
PUR	04/04/01		7,150,000	$2.500
SW.NW	ENE0.0B04	ENE0.0 ASCOT 180BP 02/07/04		
PUR	04/04/01		7,150,000	$2.500
SS.NW	ENE0.0B04B	ENE0.0 ASCOT 180BP 02/07/04		
PUR	04/04/01		7,150,000	$2.550
SW.NW	ENE0.0B04B	ENE0.0 ASCOT 180BP 02/07/04		
PUR	04/04/01		7,150,000	$2.550
SS.NW	ENE0.0B04C	ENE0.0 ASCOT 145BP 02/07/04		
PUR	05/30/01		5,000,000	$1.450
SW.NW	ENE0.0B04C	ENE0.0 ASCOT 145BP 02/07/04		
PUR	05/30/01		5,000,000	$1.450
SW.NW	ENE0.0B04D	ENE0.0 ASCOT 150BP 02/07/04		
PUR	06/01/01		10,000,000	$1.526
SS.NW	ENE0.0B04D	ENE0.0 ASCOT 150BP 02/07/04		
PUR	06/01/01		10,000,000	$1.526
SS.NW	ENE0.0B04E	ENE0.0 ASCOT 185BP 02/07/04		
PUR	07/26/01		5,000,000	$0.635
SW.NW	ENE0.0B04E	ENE0.0 ASCOT 185BP 02/07/04		
PUR	07/26/01		5,000,000	$0.635
RT.BS	ENE1/A10	ENE1 JAN'02 CALLS @ $10		
PUR	11/09/01		1,136	$1.050
SAL	11/26/01		-636	$0.200
SAL	11/26/01		-500	$0.250
SD.BS	ENE1/A10	ENE1 JAN'02 CALLS @ $10		
PUR	11/09/01		1,137	$1.050
SAL	11/26/01		-500	$0.250
SAL	11/26/01		-637	$0.200
RT.BS	ENE1/J30	ENE1 OCT'01 CALL @ $30		
SAL	10/05/01		-50	$3.700
PUR	10/20/01		50	$0.000
SD.BS	ENE1/J30	ENE1 OCT'01 CALL @ $30		
SAL	10/05/01		-50	$3.700
PUR	10/20/01		50	$0.000

RT.BS	ENE1/J60	ENE1 OCT'01 CALL @ $60		
PUR	05/11/01		265	$6.000
PUR	05/11/01		235	$5.900
SAL	10/20/01		-500	$0.000
SD.BS	ENE1/J60	ENE1 OCT'01 CALL @ $60		
PUR	05/11/01		235	$5.900
PUR	05/11/01		265	$6.000
SAL	10/20/01		-500	$0.000
RT.BS	ENE1/L5	ENE1 DEC'01 CALL @ $5		
PUR	11/26/01		400	$0.850
PUR	11/26/01		736	$0.800
SD.BS	ENE1/L5	ENE1 DEC'01 CALL @ $5		
PUR	11/26/01		737	$0.800
PUR	11/26/01		400	$0.850
RT.BS	ENE1/M40	ENE1 JAN'02 PUTS @ $40		
PUR	07/24/01		250	$3.900
SD.BS	ENE1/M40	ENE1 JAN'02 PUTS @ $40		
PUR	07/24/01		250	$3.900
RT.BS	ENE1/V25	ENE1 OCT'01 PUTS @ $25		
SAL	09/26/01		-125	$1.900
PUR	10/20/01		125	$0.000
SD.BS	ENE1/V25	ENE1 OCT'01 PUTS @ $25		
SAL	09/26/01		-125	$1.900
PUR	10/20/01		125	$0.000
RT.BS	ENE1/W7.5	ENE1 NOV'01 PUTS @ $7.5		
PUR	10/30/01		70	$0.250
PUR	10/30/01		318	$0.350
PUR	10/30/01		965	$0.450
PUR	10/30/01		992	$0.400
PUR	10/30/01		685	$0.300
SAL	11/07/01		-3,000	$0.772
SAL	11/17/01		-30	$0.000
SD.BS	ENE1/W7.5	ENE1 NOV'01 PUTS @ $7.5		
PUR	10/30/01		70	$0.250
PUR	10/30/01		685	$0.300
PUR	10/30/01		965	$0.450
PUR	10/30/01		993	$0.400
PUR	10/30/01		317	$0.350
SAL	11/07/01		-3,000	$0.772
SAL	11/17/01		-30	$0.000
RT.BS	ENE1/X10	ENE1 DEC'01 PUTS @ $10		
PUR	10/30/01		215	$1.600
PUR	10/30/01		212	$1.550

SD.BS	ENE1/X10	ENE1 DEC'01 PUTS @ $10		
PUR	10/30/01		213	$1.550
PUR	10/30/01		215	$1.600
SD.BS	ENE1/X7.5	ENE1 DEC'01 PUTS @ $7.5		
PUR	11/07/01		3,000	$1.811
RT.BS	ENE1/X7.5	ENE1 DEC'01 PUTS @ $7.5		
PUR	11/07/01		3,000	$1.811
SD.BS	ENE2/G50	ENE2 JUL'01 CALL @ $50		
PUR	07/09/01		31	$1.650
PUR	07/09/01		31	$1.700
SAL	07/21/01		-62	$0.000
RT.BS	ENE2/G50	ENE2 JUL'01 CALL @ $50		
PUR	07/09/01		94	$1.650
PUR	07/09/01		94	$1.700
SAL	07/21/01		-188	$0.000