IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
JAN 28 2002
Michael N. Milby, Clerk

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| MARK NEWBY, | § | |
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| Plaintiff, | § | |
| | § | |
| vs. | § | Civil Action No.: H-01-3624 |
| | § | (Securities Suits) |
| | § | |
| ENRON CORP., ET AL., | § | |
| | § | |
| Defendants. | § | |
| | § | |

**REPLY BRIEF IN FURTHER SUPPORT OF MOTION OF STARO ASSET MANAGEMENT LLC FOR APPOINTMENT AS LEAD COUNSEL ON BEHALF OF DEBT SECURITIES PURCHASERS**

In this action, debt investors need separate, unconflicted representation. Staro Asset Management LLC ("Staro") is by far the largest unconflicted debt investor seeking appointment as Lead Plaintiff. It is a major institutional investor, with the ability and interest to ably represent all debt investors. It has filed a class action complaint, exclusively for purchasers of debt securities, and its losses now exceed $40 million. At recent hearings, some parties incorrectly suggested to the Court that only three groups of large investors realistically can qualify for lead plaintiff status. This is inaccurate. Staro is a major institutional investor with $2 billion of funds under

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investment, which seeks to represent debt investors.

While the actions involving equity and debt investors have aspects in common (for example, both groups of investors must present evidence of false financial statements and misrepresentations to investors by Enron Corporation), they also have many critical differences. Debt and equity investments are different animals. They appear on opposite sides of the balance sheet. When a business fails - as Enron has - debt and equity investors become natural adversaries, with different rights, different causes of action under the securities laws, and different concerns. Debt investors have legal claims under Section 11 of the Securities Act, 15 U.S.C. § 77k, for which they do not need to prove defendants' state of mind. Even for the overlapping Rule 10b-5 fraud claims, 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10-5, debt and equity investors need to present different forms of evidence at trial, particularly on loss causation and damages. Furthermore, debt and equity have antagonistic interests with respect to division of any settlement fund, since any settlement will be limited and unlikely to fully satisfy all claimants who have legitimate claims under the federal securities laws.

The conflicts which naturally arise in a securities fraud litigation where an issuer goes bankrupt and there are legitimate claims on behalf of debt purchasers and equity purchasers

include:

- Allocation of a limited recovery pool between debt and equity investors.
- Differences of proof on causation and damage between debt and equity purchasers, as well as materiality.[1] For example, bond purchasers will attempt to prove a lack of causation of loss for equity purchasers who sold between March and September 2001 before any negative disclosures were made and before there was any decline in the bond prices.
- Differences of proof on liability issues. Debt purchasers have § 11 claims sounding in negligence while equity purchasers have 10b-5 fraud claims only and must prove conscious or knowing misbehavior or recklessness, a higher burden than negligence.
* Different standing requirements where § 11 claims exist.

## IV. The Candidates For Equity Lead Plaintiff Cannot Adequately Represent Debt Securities

### A. The Equity and Debt Classes Have Conflicting Interests

The other major contenders for leadership here are not in a

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[1] See Declaration of Steven P. Feinstein, Ph.D. attached hereto. Dr. Feinstein is an expert in Financial Markets and is prepared to testify upon the Court's request on the differences and conflicts between stock and bond investors relevant to this litigation.

position to adequately represent debt securities purchasers. Their interests are totally or primarily aligned with equity purchasers for whom they will seek the maximum recovery at the expense of debt purchasers:

| | Equity Claim | Debt Securities Claim | % in Debt Securities |
|---|---|---|---|
| **Florida/New York City** | **$410 MM** | **$ 39 MM** | **9%** |
| **University of California Regents (formerly Amalgamated Group)** | **$144 MM** | **-0-** | **0%** |
| **State Retirement Systems Group[2]** | **$214 MM** | **$42 MM** | **17%** |
| **Staro** | **-0-** | **$40 MM** | **100%** |

Thus, in each instance where a conflict arises, any of these lead plaintiff applicants will act in a manner that maximizes the equity investors' recovery, and minimizes that of debt investors.

The State of Washington, the only significant debt purchaser within any of the above contending groups, is part of the State Retirement Systems Group where the other members' losses are completely in common stock or other equity securities. Its chosen counsel remains conflicted as to representing bond

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[2] This excludes Alabama, which claims to be a member of this group but does not seek appointment as lead plaintiff. Including Alabama's claim would not significantly affect the disparity between the equity and debt claims asserted by the State Retirement Systems Group.

purchasers since 83% of the losses of its clients are in equities, and thus, equity interests will be favored over bond interests.

The proof conflict is made clear by the chart attached to the Feinstein Declaration. The chart shows that between March and September, 2001, the price of Enron common stock fell from $70 to $25 per share, a market capitalization loss of $40 billion. Feinstein Decl., ¶ 17 and Ex. 3. Stock purchasers who bought during the Class Period and sold between March and September 2001 will seek to prove that their losses were caused by fraud despite the fact that there were no disclosures of the fraud until after they had sold. Bond purchasers will argue that losses of these "in and out" purchasers are not caused by fraud, but by general market movements. Another conflict is evidenced by the fact that stock investors who purchased when Enron's stock price was at its height, and held until Enron's bankruptcy, will seek to prove that all of their losses were caused by fraud, while bond investors will contend that a significant portion of those stock purchasers' losses were caused by market movements, not by fraud, because the stock had lost more than half of its value before fraud was first uncovered.

By contrast, in the same March through September period, Enron bond prices held steady. The price of the zero coupon bonds sunk from 60% of par value, to less than 20% in October and

November 2001 when adverse information about Enron's liquidity and ability to survive was first disclosed. See Feinstein Declaration, Ex. 3. The positions of the two groups on damages and loss causation are irreconcilable. Each will require different expert witnesses, therefore they cannot plausibly be presented by the same Counsel or the same lead plaintiff. Each group must have its own champion.

The New York/Florida coalition argues that differences between debt and equity purchasers matter only in the bankruptcy court and not here. They miss the point. Where the issuer of securities is in bankruptcy, as Enron is here, a limited recovery pool relative to the size of the claims is a certainty. Therefore the Court should protect each group's competing claims, equity and debt, by providing for separate, independent representation where conflicts arise as they inevitably will.

The Regents of the University of California plainly cannot represent debt securities, as they have no debt securities claim at all. The withdrawal of Amalgamated Bank and HBK, who formerly had been allied with the University of California for Lead Plaintiff consideration exacerbates the lack of representation for the debt investors. The University of California has no debt investments at all, and therefore has the most severe financial incentive to limit the debt investors' recovery. Amalgamated Bank and HBK, which did have debt investments, have withdrawn

from their alliance. The Court can presume they have no influence over their remaining group member, because they have submitted Affidavits disclaiming further participation.

Debt securities in this case are not a "niche," as opposing candidates for Lead Plaintiff have stated. **Rather, they are a large group of fraud victims who invested over $15 billion in Enron, see Feinstein Affidavit, ¶ 17, and whose interests conflict with those of purchasers of common stock.** Section 11 claims on behalf of debt securities investors cannot be represented by common stock purchasers. The stock purchasers lack standing. There must be a debt securities representative asserting those claims and a debt securities lead plaintiff insuring that all of the debt claims, including Section 11 claims, are properly represented.

### B. The Equity Class Representatives Have No Legal Support For Their Position

The cases cited by competing candidates for lead plaintiff concerning whether stock, and options (or warrants) to purchase stock, require separate representation are irrelevant to the issues presented here. In re: Waste Management Inc. Secur. Litig., 128 F.R.D. 401 (S.D. Tex. 2001) (Harmon, J.)[3]; In re:

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[3] In Waste Management, this Court noted numerous cases where equity investors were not permitted to represent debt. Id. at 427 (citing In re: One Bancorp. Secur. Litig., 136 F.R.D. 526, 531 (D. Me. 1991); Model Assoc. Inc. v. U.S. Steel Corp., 88 F.R.D. 338, 340 (S. D. Ohio 1980); Weisberg v. APL Corp., 76

Microstrategy Inc. Secur. Litig., 110 F. Supp.2d 427 (E.D. Va. 2000); Aronson v. McKesson HBOC Inc., 79 F. Supp.2d 1146 (N.D. Cal. 1999); Deutschman v. Beneficial Corp., 132 F.R.D. 359 (D. Del. 1990); Clark v. Cameron-Brown Co., 72 F.R.D. 48 (M.D. N.C. 1976); In re: Tel-Save Secur. Litig., 2000 U.S. Dist. LEXIS 1034, (E.D. Pa. July 19, 2000); In re Orbital Sciences Corp. Secur. Litig., 188 F.R.D. 237 (E.D. Va. 1999); In re Oxford Health Plans, Inc. Secur. Litig., 182 F.R.D. 42 (E.D.N.Y. 1998); Epstein v. Moore, [1988-89] Fed. Sec. L. Rep. ¶ 93,957 (D.N.J. 1988).

Investors in options or warrants to purchase stock acquire interests in the same security as investors in the stock itself. The factors that affect the price of a stock will also affect the price of options to purchase stock. The trading patterns of options to purchase common stock parallel that of the underlying common stock, as both kinds of investments react to material corporate information in the same manner. At trial, for purchasers of common stock, warrants and options, issues of loss causation will be substantially identical, and damages can be determined by application of a mathematical formula. By contrast, debt and equity prices react differently to material corporate news, and therefore must present different evidence on loss causation and damages. See Feinstein Declaration, ¶¶ 21-22, and sources cited therein. Thus, the cases in which stock and

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F.R.D. 233 (E.D.N.Y. 1981).

option investors were consolidated within a single Lead Plaintiff structure are of little relevance.

None of the competing candidates for lead plaintiff have addressed the principal obstacle: that a single Lead Plaintiff cannot represent the interests of both debt and equity class members, because they must present different evidence and arguments and because interests conflict where a limited fund must be allocated among debt and equity. Instead, they assert that other Courts have appointed single representatives for more than one class of stock, for both stock and options, or for equity and debt where separate representation was not requested because there were no conflicting, competing interests seeking to recover from a limited fund. In the following cases, the Court considered only differences between different sub-groups of equity purchasers: In re: Lucent Techs., Inc. Secur. Litig., 194 F.R.D. 137 (D.N.J. 2000); In re: Cendant Corp. Litig., 182 F.R.D. 476 (D.N.J. 1998); In re: Atlantic Fin. Secur. Litig., 1990 U.S. Dist. LEXIS 15965 (E.D. Pa.1990); In re: Olsten Corp. Secur. Litig., 3 F. Supp.2d 286 (E.D.N.Y. 1998); In re Tyco Int'l, Ltd. Secur. Litig., [2000-01] Fed. Sec. L. Rep. ¶ 91,207 (D.N.H. 2000). The few cases cited by competitors in which debt and equity investors were permitted unified representation, all decided prior to passage of the PSLRA, differed from this action in two critical ways: (1) The issuer was not in bankruptcy, so

that the limited fund conflicts were not present; and (2) separate representatives for debt and equity interests had not come forward, so the Courts' only choices were to permit joint representation or dismiss meritorious claims. Endo v. Albertine, 147 F.R.D. 164 (N.D. Ill. 1993); In re: Saxon Secur. Litig., [1983-84] Fed. Sec. L. Rep. ¶ 99,691 (S.D.N.Y. 1984); Handwerger v. Ginsberg, [1974-75] Fed. Sec. L. Rep. ¶ 94,934 (S.D.N.Y. 1975).

Where, as here, there is a limited fund which causes irreconcilable conflicts regarding loss causation and damages between purchasers of equity and purchasers of debt, neither group can adequately represent the other. See 15 U.S.C. S 15 78u-4(3)(b)(iii)(II)(aa) (lead plaintiff must "fairly and adequately protect the interests of the class"). The consolidation of disparate and conflicting interests under one lead plaintiff group whose interests are completely or almost completely beholden to equity investors is ill-advised.[4] The State Retirement Systems Group also misstated the Court's holding in Muzinich Co., Inc. v. Safety-Kleen Corp., C.A. No. 3:00-1145-17 (D.S.C. 2000)(attached to Staro's opening brief.) In that

[4] The Florida/New York coalition also relies on Sanders v.Robinson Humphreys/American Express, 634 F.Supp. 1048 (N.D. Ga. 1986). In that case, the Court denied class certification because it found that the amalgam of class representatives were incapable of supervising the litigation.

case, a group of stock and bond investors sought to represent both kinds of investors jointly, as the State Retirement Systems Group seeks to do here. The Court denied the application, and appointed a separate representative for bonds instead.

Counsel are not aware of any instance where a Court permitted a single Lead Plaintiff and Counsel to represent both equity and debt investors over the objections of qualified members of either group. In Safety Kleen, where objection was belatedly raised to joint representation, the Court separated the two, appointing a separate lead counsel for equity and bonds. Counsel objecting to joint representation was Grant & Eisenhofer, one of the counsel for the State Retirement Systems Group who is taking the opposite position here. Nor has any party identified any case where equity and debt investors of a single bankrupt entity were represented by a lead plaintiff or group with a primarily or exclusively equity loss. This case, where billions of dollars are at stake for members of each group, should not be the first to require such conflicted representation. There is ample room for at least two qualified lead plaintiffs and their chosen counsel who will separately represent the interests of equity and debt purchasers when conflicts arise as they do here.

## V. Staro Can Adequately and Efficiently Represent The Interests Of Debt Investors

Staro is not bringing this action at the behest of its attorneys. It is a private, sophisticated institutional investor

fulfilling its fiduciary duties to its investors, seeking to recover the $40 million it lost as a consequence of Defendants' securities fraud. It has not joined with a group of incompatible interests to help its attorneys secure the position of Lead Counsel, as the bond investor within the State Retirement Systems Group did, nor has it either formed or broken an alliance after seeking appointment, to promote its counsel's prospects, as Florida, New York, and the Regents of the University of California have. Compare Waste Management, 128 F. Supp.2d at 431. It has supported the efforts of other Plaintiffs' Counsel where that support was in the best interest of the debt securities class, and will continue to do so where appropriate to maintain efficiency in this litigation. But it will not accept representation by a Lead Plaintiff Group that can maximize its own recovery by minimizing that of Debt investors.

Staro and its Counsel will cooperate with equity investors on issues of common concern. We will not duplicate work. In the litigation on document retention conducted to date, Staro has joined with other Plaintiffs, and has not filed unnecessary briefs or made unneeded Court appearances. There is no reason that litigation on common issues will be complicated or made more costly by separate representation of each interest.

## III. Staro is the Most Adequate Proposed Lead Plaintiff for the Debt Securities Class

Staro is unquestionably the most adequate of the proposed

lead plaintiffs seeking to represent debt securities. Staro's losses on debt investments of $40 million is 40 times greater than that of Pulsifer, and over 400 times greater than that of the Archdiocese of Milwaukee. The Archdiocese of Milwaukee's claim is based on a loss of less than $100,000, 0.25% the magnitude of Staro's losses, so it cannot be considered the "most adequate plaintiff" to represent debt securities. Its status as an eleemosynary institution confers on it no statutory-or logical--advantage over other candidates for appointment as lead plaintiff; to the contrary, its relatively small investment suggests it has a lesser incentive to protect the interests of the debt class than Staro. Finally, its suggestion that Staro may be subject to unique defenses because it is a sophisticated entity is sheer speculation without any foundation in the record of this action. Most of the competitors for lead plaintiff are sophisticated entities, which is desirable for leading a case such as this one.

In its initial application, Pulsifer sought to join a group of equity investors in a joint lead plaintiff application. In its responsive brief, it has changed its position and broken its alliance, so that it now seeks to represent only those investors which purchased Enron's 7% notes. Staro is willing to work with Pulsifer and its Counsel in pursuit of claims specific to 7% notes, but is concerned that appointment of separate

representatives for each of the approximately 65 different bond issues of Enron, see Feinstein Declaration ¶ 25(i), would become unwieldy.

## IV. Conclusion

Staro fulfills all of the criteria to serve as lead plaintiff, set forth by this Court in Waste Management, 128 F.R.D. at 432. Its interests are not adequately represented by representatives with massive losses in equity investments and little or no investments in debt securities. Its losses on debt investments exceed those of competing applicants for the debt securities class, so it is the most adequate representative. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(bb). Its motion for appointment as lead plaintiff and for approval of its choice of lead counsel for the debt securities class should be granted.

DATED: January 28, 2002

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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|---|---|---|
| **MARK NEWBY,** | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **Civil Action No. H-01-3624** |
| | ) | **(Securities Suits)** |
| **ENRON CORP., ET AL.,** | ) | |
| **Defendants** | ) | |

**DECLARATION OF**
**PROFESSOR STEVEN P. FEINSTEIN, PH.D., CFA**

I, Steven P. Feinstein, Ph.D., CFA, state the following to be true to the best of my knowledge, based on my experience and expertise in the matters discussed.

## Introduction

1. This declaration addresses the subject of differences and likely conflicts between equity and debt investors in the Enron securities litigation. I have prepared this declaration at the request of counsel for Staro Asset Management LLC. If necessary, I am willing to testify in court regarding my conclusions. My credentials are presented in Exhibit 1, and my curriculum vitae is presented in Exhibit 2.

2. Based on fundamental principles of finance, it is my opinion that:
   a) Stocks may lose value and sustain damages due to factors that are significantly different from the factors that may cause bonds to lose value and sustain damages.
   b) In mid-2001, Enron stock lost approximately half of its value during a period in which, according to data provided by Staro Asset Management LLC, Enron bonds suffered no apparent drop in value at all. This fact, which is illustrated in Exhibit-3, is stark evidence

that the factors, events, and misrepresentations that caused damage to Enron stock differ from the factors, events, and misrepresentations that caused damage to Enron bonds.

c) Certain factors, events, and misrepresentations that may cause bonds to lose value actually cause stocks to rise in value.

d) Stockholders and bondholders are often competing rather than cooperating investor classes, as they each vie for a claim to a company's assets.

e) The methodology one would apply to estimate damages suffered by bondholders is different from the methodology one would apply to estimate damages suffered by stockholders.

f) The manner in which bondholders influence the management of a company so as to protect their financial interests is significantly different from the manner stockholders exercise control so as to protect their unique financial interests. Consequently, what may be fraud from the perspective of bondholders may not be fraud from the perspective of stockholders.

g) Whereas stock and stock options are very similar in terms of what might cause losses and damages, bonds do not share these similarities. Stock options are derivatives, meaning that their value is *derived* from the value of the underlying stock. Stock options generally behave like leveraged stock. Bonds, on the other hand, do not derive their value from the value of stocks. Stocks and bonds are competing claims, while stocks and options are contingent claims, that is, linked to one another.

**Background**

3. Bonds are fixed income securities. The contractual obligation of a corporation to a bondholder is to pay fixed cash flows to bondholders on pre-specified dates. Stock, on the other hand, is an ownership stake, which entitles the holder to the residual cash flows available after bondholders are paid.

4. Stockholders exercise control over the firm and protect their financial interests by electing a board of directors, which in turn hires the company's executives. Stockholders also vote on important initiatives affecting a company's direction and operations. Bondholders have no such direct control. They have no vote in the election of directors, and they generally have no say in the appointment of executives. To protect their financial interests, bondholders must rely on the compliance of management with indentures or covenants that are written into the

bond contract when the security is issued.

5. Bonds are senior claims to stocks. Only after bondholders are paid the cash they are due can stockholders be paid dividends.

**Material Factors and Information**

6. Because bonds are senior to stock, and because of the different manners in which the interests of the respective investor classes are protected, different information is material in pricing bonds and stocks, respectively. To value bonds, analysts focus on information such as, credit rating, default risk, duration, maturity, market interest rates, credit spreads, interest coverage ratios, the debt-equity ratio, other types of leverage ratios, the existence or creation of more senior claims, operating income, and operating cash flow. By contrast, to value stocks, analysts focus on information such as expected net income, expected net cash flow, equity valuation multiples, and risk-adjusted required rates of equity return. Consequently, the determination of loss causation and damages to Enron's bondholders will need to consider different valuation models and focus on different factors than the determination of loss causation and damages to Enron's stock or option holders.

7. Because equity shares are a residual claim, bad news affects the value of equity before it impacts the value of debt. For example, suppose a company has made misrepresentations about three aspects of its business. Call these aspects A, B, and C. Suppose each misrepresentation inflates the overall value of the firm. Suppose that the truth about A, B, and C is revealed sequentially – first A, then B, and finally C. The first disclosure may have a large impact on the value of the stock as investors learn that expected cash flows and asset values are less than was previously believed. The second negative disclosure might cause the value of the stock to drop precipitously to a value near zero. By the time C is revealed, there may be virtually no further impact on the stock value since the stock has already fallen to a near-zero value. Alternatively, disclosure of item A, while having a severe impact on the stock value, may have little impact on the value of the company's bonds, if investors determine that the impact on the firm is not so great as to affect the cash flow to these senior claimants. The disclosure of item B may similarly have little impact on the bonds, while the stock absorbs the loss. The third piece of bad news, C, while having little impact on the stock might be the straw that breaks the camel's back, sending the company into bankruptcy, and the bonds down in value precipitously. As seen in this example, due to the nature of the

senior/subordinate hierarchy of claims, the same news may impact stocks and bonds very differently.

8. This example is not purely hypothetical. The data describing the history of Enron stock and bond prices indicate that the sharp drop in Enron's stock occurred before the sharp drop in Enron's bond values.

9. At trial, evidence concerning the causes of the drop in stock prices will have to focus on a different time period than the evidence concerning the causes of the drop in bond prices. Because of the mismatch in the timing of the losses, the determination of damages to stock investors will have to account for a different set of possible negative effects for which Enron is not responsible, than the set of offsetting negative effects that must be accounted for in the determination of damages to the bond investors. Factors, information, and events that are material to the stock losses likely differ from the factors, information, and events that are material to the bond losses.

**Off Balance Sheet Items**

10. Perhaps the most important single piece of information that prospective bond investors need to ascertain in order to price and select bonds is where in the hierarchy of seniority each particular bond lies. Consequently, misrepresentations about the quantity and seniority of off-balance sheet liabilities and undisclosed debts is of utmost importance to bondholders. On the other hand, stock investors, though interested in the quantity of off-balance sheet items and total debt, are not as interested in the internal structure of seniority among the company's debts, because all debt is senior to equity. For this reason, information that may be highly relevant for determining the loss causation and damages to Enron's bondholders might be different from the information relevant to the stock holders.

11. My initial review of the facts and circumstances of the Enron case indicate that off balance sheet items and undisclosed liabilities may play a very important role in the determination of damages to the bondholders.

**Divergent Impact of Risk on Stocks and Bonds**

12. Not only might there not be a significant overlap between the factors, information and events that caused the losses suffered by the bondholders and stockholders, respectively, but some

factors that caused the bonds to lose value may actually have caused the stocks to either rise in value or fall less than they otherwise would have.

13. It is a widely known and generally accepted principle of finance that equity holders benefit at the expense of bondholders when management subjects the firm's assets to greater risk. For a fixed set of assets, taking on greater risk allows the equity holders to expropriate value from the bondholders. Equity investors and the management they appoint have an incentive to gamble with the bondholders' money. If risky gambles payoff, the extra profit is reaped by the equity holders, since bondholders are limited to receiving the contractual fixed cash flows. If the risky gambles lose, the equity holders will have lost "other people's money" – the bondholders' money. Debt investors therefore prefer safety, while equity investors have more to gain when the firm takes risks.

14. The following quotes from the finance literature describe the divergence between the interests of the bondholders and equity holders with respect to the risk exposure of the firm, and describe how some factors that may cause bonds to fall in value may cause stocks to rise.

> "Now suppose the stockholders, acting through management, cause the firm to take on a large new project that has greater risk than was anticipated by the firm's creditors. This increased risk will cause the required rate of return on the firm's debt to increase, which in turn will cause the value of the outstanding debt to fall. If the risky capital investment is successful, all of the benefits will go to the firm's stockholders, because creditors' returns are fixed at the old, low-risk rate. However, if the project is unsuccessful, the bondholders will have to share in the losses. From the stockholders' point of view, the capital investment game has a payoff of "heads I win, tails you lose," which is obviously not a good game for the creditors. Similarly, suppose managers increase the firm's level of debt, without changing its assets, in an effort to leverage up stockholders' return on equity. If the old debt does not have seniority over the new debt, its value will decrease, because an increased number of creditors will have claims against the firm's cash flows and assets. In both the riskier asset and the increased leverage situation, the firm's stockholders would gain at the expense of the firm's creditors."
> **Brigham, Eugene F. and Louis C. Gapenski. *Financial Management: Theory and Practice*, Seventh Edition. Dryden Press 1994. Page 25.**

> "In analyzing common stock as an option on the value of the firm, we see that increasing the risk of the firm will make the stock more valuable. ... The stockholders have an incentive to increase risk. If the higher risk pays off, the stockholders keep all the benefit. ... However, increasing the risk of the firm without increasing the expected value cannot increase the value of the firm as a whole. The increase in the value of the stock must come at the expense of the bondholders. Increasing the risk of the firm without increasing the firm's expected value transfers wealth from bondholders to stockholders. Bondholders

are aware of this incentive for the stockholders. As a result, the bond covenants often prevent the borrower from increasing the risk of the firm."
**Kolb, Robert W. *Futures, Options, and Swaps.* Second Edition. Blackwell. 1997. Pages 551-552.**

"The stockholders benefit at the expense of the bondholders when the high-risk project is accepted. The explanation is quite clear: The bondholders suffer dollar for dollar when the firm's value falls short of the $400 bond obligation. However, the bondholders' payments are capped at $400 when the firm does well. This can be explained in terms of call options. We argued earlier in this chapter that the value of a call rises with an increase in the volatility of the underlying asset. Because the stock is a call option on the firm, a rise in the volatility of the firm increases the value of the stock. In our example, the value of the stock is higher if the high-risk project is accepted."
**Ross, Stephen A., Randolph W. Westefield, and Jeffrey Jaffe. *Corporate Finance*, Fourth Edition. Irwin 1996. Page 598.**

"The above discussion is in terms of risky bonds. Of course, a loss to the bondholders implies a benefit to the stockholders. Hence, stockholders must gain when dividends are paid during periods of financial distress."
**Ross, Stephen A., Randolph W. Westefield, and Jeffrey Jaffe. *Corporate Finance*, Fourth Edition. Irwin 1996. Page 599.**

"Stockholders of levered firms gain when business risk increases. Financial managers who act strictly in their shareholders' interests (and *against* the interests of creditors) will favor risky projects over safe ones. They may even take risky projects with negative NPVs."
**Brealey, Richard A. and Stewart C. Myers. *Principles of Corporate Finance*, Sixth Edition. Irwin McGraw-Hill. 2000. Pages 517-518.**

"The Conflict between Bondholders and Stockholders:
Stockholders and bondholders have different objective functions, and this can lead to agency problems, where stockholders can expropriate wealth from bondholders. The conflict can manifest itself in a number of ways -- for instance, stockholders have an incentive to take riskier projects than bondholders do and pay more out in dividends than bondholders would like them to. This conflict between bondholders and stockholders can be illustrated dramatically using the option pricing model. Since equity is a call option on the value of the firm, an increase in the variance of the firm's value, other things remaining equal, will lead to an increase in the value of equity. It is therefore conceivable that stockholders can take risky projects with negative present values, which, while making them better off, may make the bondholders and the firm less valuable."
**Damodaran, Aswath. *Investment Valuation: Tools and Techniques for Determining the Value of Any Asset.* John Wiley & Sons, Inc. 1996. Page 379.**

15. As a result of the divergence between the affect of risk exposure on the respective values of stocks and bonds, factors that caused Enron bondholders to lose money may be overlooked by analysts who are focusing on losses suffered by Enron stockholders. Attorneys who represent Enron's stock and option investors may fail to consider fraud or misrepresentations that impacted only the bondholders. My preliminary examination of the facts and

circumstances of the Enron case suggest that management of risk is a particularly important factor in this specific case. Consequently, the differential impact of risk on the bond and stock investors will be extremely important in this case.

**Competing Interests of Stock and Bond Investors**

16. Although both stock and bond investors each have a shared interest in the success of the firm, they have competing interests regarding claims on the firm's assets and cash flows. Cash that does not flow to bondholders necessarily flows to equity investors. Assets that are not claimed by bondholders become the property of equity investors. In situations where a firm's assets must be liquidated, the competition between the investor classes become contentious.

**The Nature of the Bond Class is Distinct from the Nature of the Stock Class**

17. According to Enron's year 2000 10-K, there were 752 million shares of common stock outstanding as of December 31, 2000. The closing price for a share of Enron stock on October 1, 2001 was $29.15. On December 3, 2001, Enron stock closed at 40 cents per share. Consequently, Enron's market capitalization of equity fell from $21.9 billion on October 1, 2001 (equal to 752 million shares times $29.15 per share) to $300.8 million by December 3, 2001 (equal to 752 million shares times $0.40 per share). By contrast, according to Bloomberg, the book value of Enron's outstanding debt is currently approximately $15 billion, and according to information provided by Staro Asset Management, the market price of Enron's bonds was not materially impacted over this same time period.

18. My preliminary analysis of the securities issued by Enron indicate that there were far more bond issues than equity issues outstanding. Enron's fiscal year 2000 10-K filing lists only one class of common stock and two classes of preferred stock. Alternatively, according Bloomberg, Enron has at least 65 different bond issues outstanding. Among the outstanding bond issues, maturities and coupon rates differ. The bond investors as a group, therefore, comprise greater diversity in terms of types of assets owned, than do the equity investors. This greater diversity will require that special attention be paid to the bond investors in the Enron litigation, in order to determine what caused their losses and to determine the magnitude of those losses.

19. By virtue of the type of business Enron was engaged in, some of their debt securities are atypical and complex. This complexity will require special attention in order to determine what caused the losses suffered by bond investors and the magnitude of those losses.

20. The relative respective magnitudes of Enron's outstanding debt and equity, the number of different debt issues outstanding, and the complexity of some of the debt issues will all require that special attention be devoted to the bond investors in order to determine loss causation and damages.

**Options**

21. Stock options are often referred to as "redundant securities". Options are called redundant because they can be replicated by a portfolio consisting of a long or short position in the underlying stock coupled with a long or short position in Treasury bills. Call options are replicated by buying the company's stock with borrowed money. Put options are replicated by a short position in the stock and a long position in Treasury bills. Because stock options can be replicated with positions in the company's stock, the value of stock options is dependant primarily on the value of the underlying stock. This dependency is exactly why options are called "derivatives", because their value derives from the value of the underlying stock.

22. The following quotes from the finance literature describe the close link between a stock option and the underlying stock.

> "Options and futures are examples of *derivatives*. These are instruments whose values depend on the prices of other, more basic variables. An IBM stock option is a derivative because its value depends on the price of IBM stock;"
> **Hull, John C. *Introduction to Futures and Options Markets*. Third Edition. Prentice Hall. 1998. Page 12.**

> "A financial derivative is a financial instrument or security whose payoffs depend on another financial instrument or security. For example, an option on a share of stock depends on the value of the underlying share."
> **Kolb, Robert W. *Futures, Options, and Swaps*. Second Edition. Blackwell. 1997. Page 2.**

> "Under the Black-Scholes assumption, a call option can be viewed as a continually adjusted, leveraged position in the stock. As such, at any point in time, the analysis of the risk and reward of any [option] position can be addressed by translating all options into their equivalent leveraged positions."
> **Ritchken, Peter. *Options: Theory, Strategy, and Applications*. Scott Foresman and Co. 1987. Page 170.**

> "A *derivative security* is a financial contract written on an underlying asset. Its value is *derived* from the value of the underlying asset, hence, the name. The underlying asset may be a stock, Treasury bill, foreign currency or even another derivative security. For example, a stock option depends on the value of the stock on which it is written;"
> **Jarrow, Robert, and Stuart Turnbull. *Derivative Securities*. Southwestern College Publishing. 1996. Page 1.**

23. Whatever information, factors, and events caused Enron's stock to move are the same information, factors, and events that caused the options to move. It is reasonable, therefore, that the same legal representatives who work with the equity investor class can satisfactorily represent the investors who bought or sold Enron options.

24. Bonds, on the other hand, are not derivatives. The value of a company's bond does not depend primarily on the value of the company's stock. As described above, a different set of financial variables is key in valuing bond values and damages than those required to value stock values and damages. Bond investors will not be served well by legal representatives who focus on the information, factors, and events that caused the stock and option losses.

**Summary**

25. It is my opinion that, as plaintiffs, Enron's bondholders will face unique challenges not faced by the equity investors, for the following reasons:
    a) Material factors and information that caused the bonds to fall differ from the material factors and information that caused the stocks and options to decline.
    b) The timing of the drop in bond values differed from the timing of the decline in the stock and options.
    c) Valuation models for bonds differ substantially from the models used to value stocks and options, in terms of both form and factors incorporated.
    d) Bondholders do not have the same control over a company's management as equity holders. What may be fraud or misrepresentations for bondholders may not be from the perspective of stockholders.
    e) The financial interests of bondholders are supposed to be protected by indentures and covenants, whereas the financial interests of stockholders is protected by representation by the board of directors.

b) ~~The timing of the drop in bond values differed from the timing of the decline in the stock~~ and options.

c) Valuation models for bonds differ substantially from the models used to value stocks and options, in terms of both form and factors incorporated.

d) Bondholders do not have the same control over a company's management as equity holders. What may be fraud or misrepresentations for bondholders may not be from the perspective of stockholders.

e) The financial interests of bondholders are supposed to be protected by indentures and covenants, whereas the financial interests of stockholders is protected by representation ~~by the board of directors.~~

f) Bond and stock values are impacted very differently when a company accepts greater exposure to risk. When a firm takes on greater exposure to risk, stockholders benefit at the expense of bondholders.

g) The quantity and seniority status of off-balance sheet items is generally of greater significance to bondholders than it is to equity holders. The existence of off balance sheet items appears to be an important factor in the events surrounding Enron's decline.

h) Some of Enron's debt securities exhibit greater than average complexity, whereas the common stock appears to be typical in nature.

i) There are more than 65 different issues of Enron bonds outstanding, differing in terms of maturity and coupon rate. Alternatively, there appears to be only one class of common stock and two classes of preferred stock outstanding. The greater diversity within the bond class creates special challenges that must be addressed in order to determine loss causation and damages.

Signed under the pains and penalties of perjury,

Professor Steven P. Feinstein, Ph.D., CFA
January 28, 2002

JULIA TIMAKHOVICH
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 14, 2008



JAN-28-2002 15:10 BRCK BRY MNGT

## EXHIBIT 1

**Credentials**
**Steven P. Feinstein, Ph.D., CFA**

I, Steven P. Feinstein, am an Associate Professor of Finance at Babson College and a Senior Expert with The Michel/Shaked Group, a division of Back Bay Management Corporation. I have a Ph.D. in Economics from Yale University, a Master of Philosophy degree in Economics from Yale University, a Master of Arts in Economics from Yale University, and a Bachelor of Arts degree in Economics from Pomona College. I also hold the Chartered Financial Analyst designation, granted by the Association of Investment Management and Research.

At Babson College I teach undergraduate and MBA level courses in Financial Management, Valuation, Investments, and Quantitative Methods. I have taught executive courses in finance for numerous corporations. Prior to my joining the faculty at Babson College, I taught finance at Boston University. Prior to that I was an Economist at the Federal Reserve Bank of Atlanta where my primary responsibilities were to monitor financial markets, analyze proposed regulation, and advise the Bank President in preparation for his participation in meetings of the Federal Open Market Committee – the government body responsible for monetary policy in the United States.

Past and present consulting clients of mine include the United States Securities and Exchange Commission, the Internal Revenue Service, and the Attorney General of the State of Illinois.

I have published extensively in the field of finance. My finance articles have appeared in the *Atlanta Federal Reserve Bank Economic Review, Derivatives Quarterly, Derivatives Weekly, The Journal of Risk, The American Bankruptcy Institute Journal, The Journal of Financial Planning, Risk Management,* and *Primus*. I am the author of *Finance and Accounting for Project Management*, published by the American Management Association. I wrote two chapters in the best-selling book *The Portable MBA in Finance and Accounting* -- one on corporate financial planning and the other on risk management using options and futures. I have presented research at the annual conventions of the American Finance Association, the Academy of Financial Services, the Multinational Finance Society, the Financial Management Association, and the International Conference on Applied Business Research. Co-authored papers of mine have been

presented at the Eastern Finance Association meetings and the Midwestern Finance Association meetings.

I have been selected to review papers for numerous finance journals and conferences, and I have reviewed finance textbook manuscripts for Prentice-Hall and Southwestern Publishing. I have been quoted on matters relating to finance and investments in the *Wall Street Journal, The Washington Post,* and *The New York Times*, and my research relating to financial analysis and valuation has been discussed in *Bond Buyer* and *Grant's Municipal Bond Observer.*

I am a member of the American Finance Association, the Financial Management Association, the North American Case Research Association, the Association of Investment Management and Research, and the Boston Security Analysts Society where I am a member of the education committee. I served on the Fixed Income Specialization Examination Committee of the Association for Investment Management and Research, which is the organization that grants the Chartered Financial Analyst (CFA) credential. The CFA designation is the premier credential for financial analysts, worldwide. In order to receive this credential, applicants must pass a series of three exams covering such topics as financial valuation, bond analysis, equity analysis, business analysis, quantitative estimation methods, investment analysis, portfolio management, risk management, financial accounting, and ethical and professional standards. I teach in the Boston University CFA Review Program, and the Princeton/Shulman CFA Review Program -- two of the leading review programs that help candidates prepare for the CFA exams. In both of these programs I teach the most advanced level.

My curriculum vita is attached as Exhibit-2.

**EXHIBIT 2**

**Curriculum Vitae**

# STEVEN P. FEINSTEIN, PH.D., CFA

Babson College
Finance Division
Babson Park, MA 02457
781-239-5275
Feinstein@Babson.Edu

The Michel/Shaked Group
566 Commonwealth Avenue
Suite 100
Boston, MA 02215
617-536-4877

## EDUCATION

1989 YALE UNIVERSITY
Ph.D. in Economics (Concentration in Finance)

1986 YALE UNIVERSITY
M.Phil. in Economics

1983 YALE UNIVERSITY
M.A. in Economics

1981 POMONA COLLEGE
B.A. in Economics (Phi Beta Kappa, *cum laude*)

## TEACHING EXPERIENCE

1996 – present BABSON COLLEGE, Babson Park, MA
Full-time Faculty, Finance Division
Associate Professor (2000-present)
Assistant Professor (1996-2000)

1992 – present BOSTON UNIVERSITY'S CHARTERED FINANCIAL ANALYSTS (CFA) REVIEW PROGRAM
Instructor
A 3-level program preparing financial analysts, portfolio managers, brokers and other investment professionals for an examination leading to worldwide certification. The program is one of the world's most prestigious of its kind. Its core curriculum consists of the following modules:

- Business Analysis
- Quantitative Methods
- Equity Securities Analysis
- Derivatives
- Portfolio Management
- Fixed Income Securities Analysis
- Financial Accounting
- Economic Analysis
- Ethical and Professional Standards

1990 - 1995 BOSTON UNIVERSITY SCHOOL OF MANAGEMENT, Boston, MA
Full-time Faculty, Department of Finance

1993 - 1994 WASHINGTON UNIVERSITY, OLIN SCHOOL OF BUSINESS, St. Louis, MO
Visiting Assistant Professor, Department of Finance

**BUSINESS EXPERIENCE**

1996 - present THE MICHEL/SHAKED GROUP, Boston, MA
Senior Expert (2001 - present)
Affiliated Expert (1996 - 2001)

1987 - 1990 FEDERAL RESERVE BANK OF ATLANTA
Economist

**PROFESSIONAL DESIGNATIONS**

1998 Awarded the Chartered Financial Analyst designation by the Association of Investment Management and Research

**RESEARCH AWARDS**

1999 Greater Boston Real Estate Board/Real Estate Finance Association – Research Grant and Featured Speaker at Real Estate Finance Association Meetings

**PAPERS AND PUBLICATIONS**

"Managing Long-Term Investments," in *The Portable MBA in Financing and Accounting*, J.L. Livingstone, ed., New York: Wiley, 3rd edition 2001.

"Financial Management of Risks," in *The Portable MBA in Financing and Accounting*, J.L. Livingstone, ed., New York: Wiley, 2nd edition 1997, and 3rd edition 2001.

"Teaching the Strong-Form Efficient Market Hypothesis: A Classroom Experiment," *Journal of Financial Education*, fall 2000.

*A Future for Real Estate Futures: Potential Applications of Derivatives in Real Estate Investment and Finance.* (with Linda Stoller). Monograph. Boston: Real Estate Finance Association / Greater Boston Real Estate Board, May 2000.

"The Risk Budget: Using Your Human Resources," (with John Marthinsen and John Edmunds) *Risk Management*, April 2000

"Scenario Learning: A Powerful Tool for the 21st Century Planner," (with Jeffrey Ellis and Dennis Stearns) *The Journal of Financial Planning*, April 2000.

"Protecting Future Product Liability Claimants in the Case of Bankruptcy," (with Allen Michel and Israel Shaked) *American Bankruptcy Institute Journal*, January 2000

"Measuring Risk with the Bodie Put When Stocks Exhibit Mean Reversion," *The Journal of Risk*, Vol. 1, No. 3, 1999.

"Just-in-Time Mathematics: Integrating the Teaching of Finance Theory and Mathematics," (with Gordon Prichett) *Primus*, Vol. IX, No. 2, June 1999.

*Atlanta Park Medical Center v. Hamlin Asset Management.* (with Natalie Taylor). Babson Case Collection, Harvard Business School Press, 1998.

"Dealing with Delta," *Derivatives Week*, VII, No. 44, November 2, 1998.

"Expected Return in Option Pricing: A Non-Mathematical Explanation," *Derivatives Week*, VII, No. 35, August 31, 1998.

"When Hedges Fail: The Put Paradox and its Solution," *Derivatives Quarterly*, Vol. 4, No. 2, Winter 1997.

*Finance and Accounting for Project Management.* New York: American Management Association, 1996.

"International Investing," in *Irwin's Directory of Emerging Market Brokerages.* New York: Irwin, 1996.

"The Hull and White Implied Volatility." Boston University Working Paper #92-51, 1992.

"Immunizing Against Interest Rate Risk Using the Macaulay Duration Statistic: An Assessment," (with Don Smith) in *Financial Systems and Risk Management*, the proceedings of the US-Japan Forum on Financial Strategy in the 1990s, sponsored by Osaka Foundation of International Exchange and Boston University, August 1991.

"Covered Call Options: A Proposal to Ease LDC Debt," (with Peter Abken) *Federal Reserve Bank of Atlanta Economic Review*, March/April 1990. Reprinted in *Financial Derivatives: New Instruments and Their Uses.* Atlanta: Federal Reserve Bank.

"Forecasting Stock-Market Volatility Using Options on Index Futures," *Federal Reserve Bank of Atlanta Economic Review*, May/June 1989. Reprinted in *Financial Derivatives: New Instruments and Their Uses.* Atlanta: Federal Reserve Bank.

"The Black-Scholes Formula is Nearly Linear in Sigma for At-the-Money Options; Therefore Implied Volatilities from At-the-Money Options are Virtually Unbiased." Federal Reserve Bank of Atlanta Working Paper #88-9, December 1988.

"The Effect of the 'Triple Witching Hour' on Stock Market Volatility," (with William Goetzmann) *Federal Reserve Bank of Atlanta Economic Review*, September/October 1988. Reprinted in *Financial Derivatives: New Instruments and Their Uses.* Atlanta: Federal Reserve Bank.

"Stock Market Volatility," *Federal Reserve Bank of Atlanta Economic Review*, November/December 1987.

Book review of *In Who's Interest: International Banking and American Foreign Policy*, by Benjamin J. Cohen, Yale University Press, in *Federal Reserve Bank Of Atlanta Economic Review*, Summer 1987.

**PRESENTATIONS**

"The Role of the Financial Expert in Complex Litigation," at the Financial Management Association Conference, October 2000.

"Entrepreneurial Incentives and Resource Allocation Among Corporate Venturing Initiatives," (with Joel Shulman and U. Srinivasa Rangan), Babson Entrepreneurship Research Conference, May 2000.

"Application of Real Options in Purchasing Strategies," (with Juan Orozco), presented at the International Applied Business Research Conference, March 2000.

"A Future for Real Estate Futures," (with Linda Stoller) at the Fairfield County chapter of the Real Estate Finance Association, November 1999, and at the Greater Boston Real Estate Board, November 2000.

"Atlanta Park Medical Center v. Hamlin Asset Management," (with Natalie Taylor) at the 1999 convention of the North American Case Research Association.

"Using Future Worlds™ in the Financial Planning Process," (with Jeffrey Ellis) at the Institute of Certified Financial Planners Masters Retreat, October 1999.

"Toward a Better Understanding of Real Options: A Weighted Average Discount Rate Approach," at the 1999 Financial Management Association Conference, the 1999 European Financial Management Association Conference, and the 1999 Multinational Finance Society Conference.

"Just-In-Time Mathematics: Integrating the Teaching of Finance Theory and Mathematics," (with Gordon Prichett) at the 1999 Financial Management Association Conference.

"Alternative Dow Investments for the Individual Investor: Diamonds, Synthetics, and the Real Thing," at the 1999 Academy of Financial Services Convention.

"Evidence of Yield Burning in Municipal Refundings" at Financial Management Association Convention, October 1997; Government Finance Officers Association, 1997; and Northeast Regional Convention of the National Association of State Treasurers, 1997.

"Teaching the Strong-Form Efficient Market Hypothesis" at Conference on Classroom Experiments in the Teaching of Economics at University of Virginia, September 1995.

"Efficient Consolidation of Implied Standard Deviations," (with Shaikh Hamid) at Midwest Finance Association, March 1995.

"A Test of Intertemporal Averaging of Implied Volatilities," (with Shaikh Hamid) at Eastern Finance Association, April 1995.

"Taking Advantage of Volatility: Non-linear Forecasting and Options Strategies," (with Hassan Ahmed) at Chicago Board of Trade / Chicago Board Options Exchange Conference on Risk Management, February 1992.

"Immunizing Against Interest Rate Risk Using the Macaulay Duration Statistic: An Assessment," (with Don Smith) at Japan-U.S. Conference on Financial Strategies in the 1990s, Osaka, Japan, August 1991.

"The Hull and White Implied Volatility," at American Finance Association Convention, December 1990.

**WORKS-IN-PROGRESS**

"How to Detect Yield Burning"

"The Strong-Form Efficient Market Hypothesis in an Experimental Setting"

"Testing for Price Pressure in the Treasury Market"

"Corporate Risk Budgeting: Corporate vs. Divisional Strategic Risk Management"

**REVIEWED ARTICLES AND BOOKS FOR:**

Financial Review
North American Case Research Association
Financial Management
Journal of Business
Journal of Money, Credit and Banking
Quarterly Review of Economics and Finance
Blackwell
Prentice Hall
Southwestern Publishing

**COURSES TAUGHT**

Fixed Income Analysis (Undergraduate and MBA)
Equity Markets (MBA)
Options and Futures (Undergraduate)
Advanced Derivative Securities (MBA)
Integrated Management Core (Undergraduate)
Valuation (MBA)
Corporate Finance (MBA and Executive)
Financial Management (MBA)
Risk Management (MBA)
Investments (MBA and Executive)
Corporate Financial Strategy (MBA)
Continuous-Time Finance (Doctoral)
Portfolio Theory / Management Information Systems (Executive)
Quantitative Methods for Investment Management (Undergraduate and MBA)
Introduction to Derivatives Securities (Executive)

**TEACHING AWARDS**

Reid Teaching Award, Washington University, Olin School of Business, 1993-94.

Highest teaching score in the Boston University School of Management, Spring 1995 (4.98 out of 5)

Perfect teaching score in QTM3580 at Babson College, Spring 1998 (1.0 out of 1.0).

**SELECT LIST OF MEDIA CITATIONS**

"Washington Investing: What Michael Saylor is Really Worth," by Jerry Knight, *Washington Post*, March 6, 2000.

"IBM Retools Pensions," by Stephanie Armour, *USA Today*, May 4, 1999.

"L.A. MTA's Law Firm Says Lissack Strategy Will be a Replay," by Andrea Figler, *Bond Buyer*, September 30, 1998.

"Fed Key Player in Rescue of Floundering Hedge Fund," by Andrew Fraser, Associated Press, September 25, 1998.

"Top Banks Plan Bailout for Fund," by Andrew Fraser, Associated Press, September 24, 1998.

"Clarion Call to the Small Investor," by Jo-Ann Johnston, *Boston Globe*, March 4, 1998.

"L.A. Authority Study Shows Rampant Yield Burning Abuse," by Michael Stanton, *The Bond Buyer*, April 22, 1997.

"Dispute Over Yield Burning Dominates GFOA Session," by Michael Stanton, *The Bond Buyer*, January 29, 1997.

"Men Behaving Badly (Yield Burning)," *Grants Municipal Bond Observer*, January 24, 1997.

"Municipal Bond Dealers Face Scrutiny," by Peter Truell, *The New York Times*, December 17, 1996.

"Iowa Market Takes Stock of Presidential Candidates," by Stanley W. Angrist, *Wall Street Journal*, August 28, 1995.

"Looking for Clues in Options Prices," by Sylvia Nasar, *The New York Times*, July 18, 1991.

"For Fed, A New Set of Tea Leaves," by Sylvia Nasar, *The New York Times*, July 5, 1991.

**MEMBERSHIP IN PROFESSIONAL SOCIETIES**

American Finance Association
Financial Management Association
Boston Security Analysts Society
Association for Investment Management and Research
North American Case Research Association

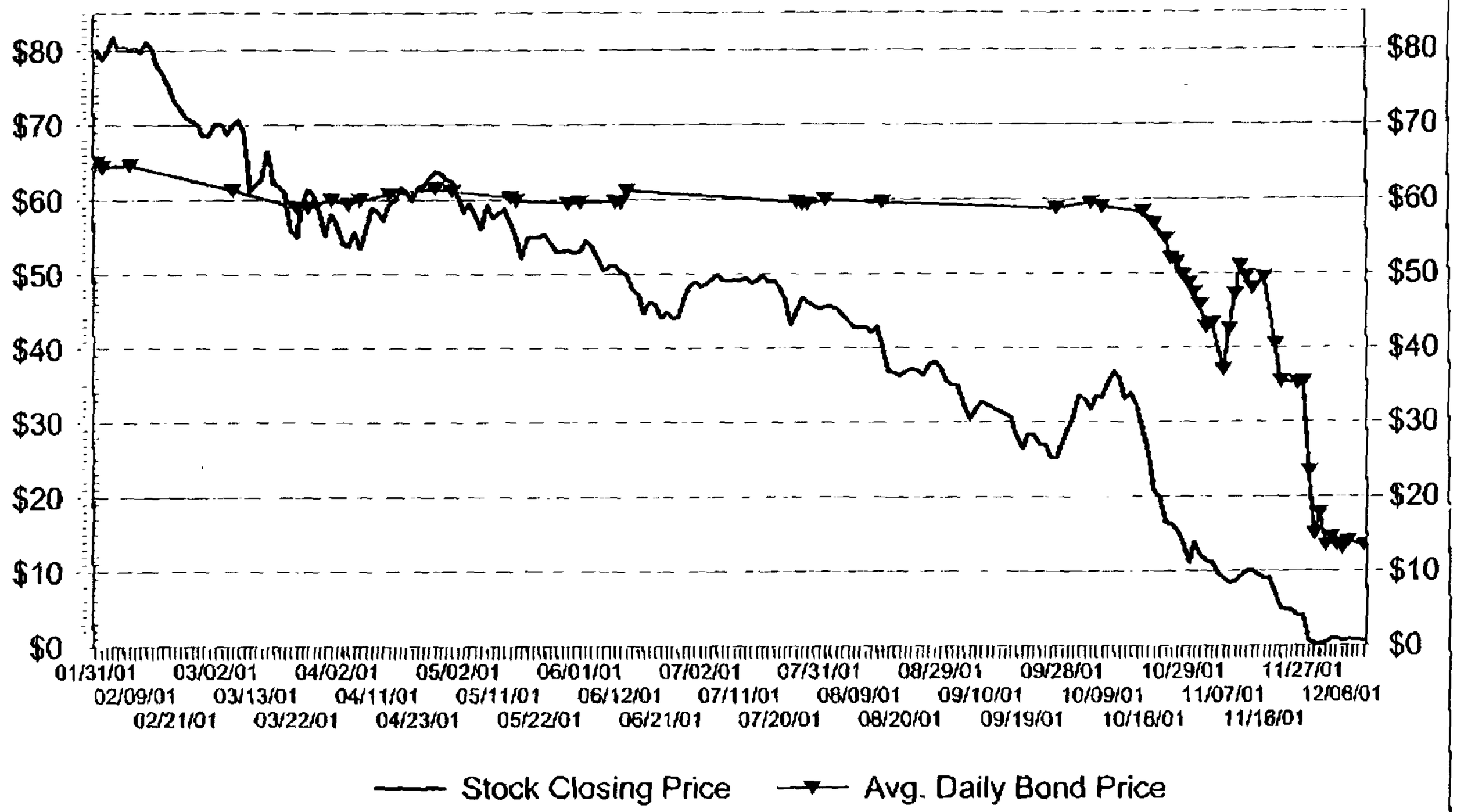
**EXHIBIT 3**

**Price History of Enron Stock and Select Enron Bonds**

**(Source: Data provided by Staro Asset Management LLC)**

# Enron - Stock & Bond Price Comparison

(Jan. 31, 2001 - Dec. 12, 2001)




The "Average Daily Bond Price" represents the average price for the zero coupon bond transactions on a given day listed in the certifications by Staro and JMG. The "Stock Closing Price" represents the daily NYSE closing price as reported by Dow Jones.