

in and knowledge of the establishment, adjustment, and termination of the RhythmsNet and Raptor-related hedging transactions.⁷² Yet, these allegations, despite their identification of Mr. Skilling specifically, also fail to plead adequate facts to support a claim of fraud.

First, and most importantly, the allegations specific to Mr. Skilling in this regard neither reflect even a bare semblance of a fraud claim nor provide an inference of fraudulent intent. For example, plaintiffs allege that:

- “Skilling wanted to lock in the gains from Rhythms stock and protect earnings against any future drops in value.”⁷³
- “Skilling decided to liquidate the Rhythms position, due to the expiration of the lock-up on Rhythms stock, the decline in the value of Rhythms stock, and the continuing volatility of the Rhythms position and the hedge.”⁷⁴
- “Skilling was behind the decision to create the Raptors as he wanted to protect the value of merchant investments and avoid excessive quarter-to-quarter volatility in Enron’s reported earnings.”⁷⁵

Even if these allegations are taken as true, plaintiffs fail to state any facts, or give any reasons, why these business objectives and judgments were fraudulent, much less carried out with fraudulent intent. Through these allegations, plaintiffs have done nothing more than reiterate legitimate reasons businesses enter into hedges generally, as well as important factors that normally would be considered in making a reasonable decision on when to liquidate such positions. Indeed, these allegations, taken at face value, would demonstrate Mr. Skilling’s genuine desire to legitimately protect and cultivate Enron’s investments.⁷⁶

accounting generally. Accordingly, plaintiffs’ claims against Mr. Skilling should be dismissed, insofar as they purport to rely on Enron’s extensive use of mark-to-market accounting as evidence of fraud.

⁷² See NCC ¶¶ 454, 457, 465, 490.

⁷³ NCC ¶ 454.

⁷⁴ NCC ¶ 457.

⁷⁵ NCC ¶ 465.

⁷⁶ The subsequent alleged failure of those hedges to obtain those goals does not state a claim of fraud. *See, e.g., Melder*, 27 F.3d at 1101 n.8 (“These allegations boil down to plaintiffs’ attempt to chastise as fraud business