Former Enron Chairman and Chief Executive Officer Kenneth L. Lay Charged With Conspiracy, Fraud, and False Statements

Money Laundering Charges Added Against Former CAO Richard Causey

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WASHINGTON, D.C. - Deputy Attorney General James B. Comey, Assistant Attorney General Christopher A. Wray of the Criminal Division, FBI Director Robert Mueller, and Enron Task Force Director Andrew Weissmann announced today that a federal grand jury in Houston has indicted former Enron Corp. Chairman and Chief Executive Officer Kenneth L. Lay on charges of conspiracy, securities fraud, wire fraud, bank fraud and making false statements.

A superseding indictment returned by the grand jury in Houston Wednesday, and unsealed today, charges Lay, 62, of Houston, with conspiracy to commit securities fraud, four counts of securities fraud and two counts of wire fraud, one count of bank fraud and three counts of making false statements to a bank. The superseding indictment joins Lay as a defendant in a case pending against former Enron CEO Jeffrey K. Skilling and former Enron Chief Accounting Officer Richard Causey. Causey was originally indicted in January 2004, and Skilling was added to the case in February 2004. The new indictment also adds a money laundering conspiracy count and four counts of money laundering against Causey in connection with fraudulent hedging vehicles, and expands certain factual allegations against Causey in connection with the securities fraud conspiracy. The case is pending before U.S. District Judge Sim Lake in Houston, Texas.

Lay surrendered this morning to FBI agents in Houston and the indictment was unsealed. Lay had an initial appearance this morning before Magistrate Judge Mary Milloy.

"The indictment charges that Lay, Skilling, Causey and others oversaw a massive conspiracy to cook the books at Enron and to create the illusion that it was a robust, growing company with limitless potential when, in fact, Enron was an increasingly troubled business kept afloat only by a series of deceptions," said Deputy Attorney General James B. Comey, who heads the President's Corporate Fraud Task Force. "These charges demonstrate the Department's commitment to the rule of law, its commitment to the principle that no one is above the law, and its commitment to unravel even the most complex of fraudulent schemes."

"This indictment alleges that every member of Enron's senior management participated in a criminal conspiracy to commit one of the largest corporate frauds in American history," said Assistant Attorney General Wray. "Kenneth Lay is charged with abusing his powerful position as Chairman of the Board and CEO and repeatedly lying in an effort to cover up the financial collapse that caused devastating harm to millions of Americans. The progress of this investigation shows that the Department of Justice will work tirelessly to hold corporate America to the high standards imposed by federal law."

"The collapse of Enron was devastating to tens of thousands of people and shook the public's confidence in corporate America," said FBI Director Mueller. "The FBI and our partners on the President's Corporate Fraud Task Force responded with a concerted effort to uncover the truth and to bring those responsible to justice. The charges against Ken Lay, Jeffrey Skilling and Richard Causey take us one step closer to restoring the public confidence in our financial markets."

The indictment alleges that at various times between at least 1999 and 2001, Lay, Skilling, Causey and other Enron executives engaged in a wide-ranging scheme to deceive the investing public, the U.S. Securities and Exchange Commission and others about the true performance of Enron's businesses. The alleged scheme was designed to make it appear that Enron was growing at a healthy and predictable rate, consistent with analysts' published expectations, that Enron did not have significant write-offs or debt and was worthy of investment-grade credit rating, that Enron was comprised of a number of successful business units, and that the company had an appropriate cash flow. It had the effect of inflating artificially Enron's stock price, which increased from approximately $30 per share in early 1998 to over $80 per share in January 2001, and artificially stemming the decline of the stock during the first three quarters of 2001.

The indictment alleges that Lay had a significant profit motive for participating in the scheme.

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As stated in the indictment, between 1998 and 2001, Lay received approximately $300 million from the sale of Enron stock options and restricted stock, netting over $217 million in profit, and was paid more than $19 million in salary and bonuses. During 2001 alone, Lay received a salary of over $1 million, a bonus of $7 million and $3.6 million in long term incentive payments. Additionally, during the period of August 21 through Oct. 26, 2001, Lay sold 918,104 shares of Enron stock to repay advances totaling $26,025,000 he had received from a line of credit extended to Lay by Enron.

As a part of the alleged scheme, unrealistic and unattainable earnings goals were set for Enron, based on analysts' expectations rather than on actual or reasonably achievable business results. When, as expected within the company, Enron consistently fell short of those goals, Lay, Skilling, Causey and others allegedly orchestrated a series of accounting gimmicks designed to make up the shortfall between actual and predicted results. Enron then announced publicly that it had met or exceeded analysts' expectations when, as Lay, Skilling and Causey allegedly knew, it made its numbers only by engaging in fraud. The indictment also alleges that Lay, Skilling and Causey made false and misleading representations about Enron's finances and business operations to analysts, at press conferences, in SEC filings and elsewhere.

Lay is principally charged for his conduct during the third quarter of 2001. As the indictment alleges, upon Skilling's abrupt departure from Enron in August 2001, Lay resumed his position as CEO of the company, intensified his oversight of Enron's day-to-day operations, and took control as leader of the conspiracy. Starting in August, according to the indictment, Lay was briefed extensively about mounting and undisclosed financial and operational problems, including overvaluation of Enron's assets and business units by several billion dollars. As a result of these and other issues confronting Enron, Lay privately considered a range of potential solutions, including mergers, restructurings, and even divestiture of Enron's pipelines, assets that Lay considered to be the crown jewels of the company. However, the indictment alleges he failed to disclose Enron's problems to the investing public and affirmatively misled the investing public about Enron's financial condition, while falsely claiming that he was disclosing everything that he had learned.

For example, the indictment states that during August 2001, Lay participated in Management Committee meetings at which reports were presented showing earnings shortfalls in virtually every Enron business unit, totaling approximately $1 billion. During early September 2001, Lay attended a Management Committee retreat in the Woodlands, Texas, at which the serious problems besetting Enron, including underperforming business units and troubled assets, were further discussed. Among other things, executives discussed the need to take in the third quarter of 2001 at least a $1 billion charge and that Enron had committed an accounting error in the amount of $1.2 billion.

The indictment alleges that throughout the remainder of September 2001, Lay engaged in a series of high-level meetings to discuss the growing financial crisis at Enron and the likely impact on Enron's credit rating. Among other things, Lay knew that the total amount of losses embedded in Enron's assets and business units was, at a minimum, $7 billion. Lay also knew that Enron's auditors had changed their position concerning the accounting treatment of four off-balance sheet vehicles called the Raptors, which required Enron to determine in short order whether an acceptable alternative methodology existed or whether, instead, Enron would have to restate its earnings and admit the error.

Despite knowing these negative facts, on Sept. 26, 2001, in an online forum with thousands of Enron employees, many of whom were investors in Enron stock, Lay allegedly stated that Enron was going to "hit [its] numbers." Lay allegedly created the false impression that his confidence in Enron's stock was such that he had increased his personal ownership of Enron stock in the past two months as a sign of his belief in what he was espousing. As the indictment alleges, during the prior two months, Lay actually purchased $4 million in Enron stock while also selling $24 million in Enron stock through nonpublic transactions.

The indictment states that in the weeks leading up to Enron's third quarter earnings release on Oct. 16, 2001, Lay determined that Enron could not publicly report a loss in excess of $1 billion without triggering negative action by Enron's credit rating agencies. Lay thus artificially capped Enron's losses to that amount. Also during this time, Lay learned that changes to the accounting rules governing goodwill (i.e., the difference between what Enron paid for an entity and the book value of that entity's net assets) would require Enron to disclose impairments to certain of its assets, including its interest in Wessex Water, a business located in Bath, England. In order to hide the impact of asset impairment, Lay allegedly claimed, falsely, that Enron was committed to engaging in a "water growth strategy," which would have required Enron to expend between $1 billion and $28 billion in capital investments in the water industry. Lay allegedly knew that Enron had no intention of pursuing such a strategy and did not have the capital to support it.

According to the indictment, on Oct.16, 2001, when Enron announced losses of approximately $1 billion, Lay allegedly sought to minimize the import of the reported losses by falsely describing the losses as "nonrecurring," that is, a one-time or unusual earnings event. Enron also disclosed the same day an approximate $1.2 billion reduction in shareholder equity, which Lay again sought to minimize by falsely attributing it to the unwind of the Raptor vehicles, rather than to an accounting error. According to the indictment, on October 12, Lay misled a representative of a national credit rating agency about the need to take additional writedowns and the extent of Enron's goodwill problems. On both October 16 and 23, Lay told the investing public that Enron had determined that its goodwill impairment was up to $200 million. However, he failed to disclose the impact on Enron of an additional goodwill impairment of up to $700 million in connection with Wessex. Also on October 23, Lay allegedly espoused faith in

Elektro, a Brazilian power plant which Enron carried on its books as worth in excess of $2 billion. In fact, as Lay allegedly knew, Elektro was overvalued by up to $1 billion. Lay also allegedly distributed materials at the road shows that misleadingly described the value of the international portfolio as $6.5 billion. In reality, as Lay knew, this vastly overstated the true value of the international assets by billions of dollars.

These and other schemes alleged in the indictment quickly unraveled, and on Dec. 2, 2001, Enron filed for bankruptcy, making its stock, which less than a year earlier had been trading at over $80 per share, virtually worthless.

Lay was also charged in four counts with bank fraud and making false statements to three banks arising out of his obtaining and using four personal lines of credit worth over $60 million. Lay allegedly promised the banks that the loans would not be used to purchase stock. As a result of these false representations, the banks extended far greater loans to Lay than they otherwise would. The indictment alleges that in spite of his promises, Lay repeatedly used the lines of credit to buy the stock. The lines of credit were collateralized mainly by artificially inflated shares of Enron stock and were repaid with the same.

If convicted of all the charges in the indictment, Lay faces a maximum sentence of 175 years in prison and millions of dollars in fines.

Criminal indictments are only charges and not evidence of guilt. A defendant is presumed to be innocent unless and until proven guilty.

The investigation into Enron's collapse is being conducted by the Enron Task Force, a team of federal prosecutors supervised by the Justice Department's Criminal Division and agents from the FBI and the IRS Criminal Investigations Division. The Task Force also has coordinated with and received considerable assistance from the Securities and Exchange Commission. The Enron Task Force is part of President Bush's Corporate Fraud Task Force, created in July 2002 to investigate allegations of fraud and corruption at U.S. corporations.

Thirty-one defendants have been charged to date, including 21 former Enron executives. Eleven defendants have been convicted to date, including former CFO Andrew Fastow and former Treasurer Ben Glisan. To date, the Enron Task Force has restrained more than $161 million in proceeds derived from criminal activity. The Task Force investigation is continuing.