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FORMER ENRON ACCOUNTANT, MERRILL LYNCH EXECUTIVE CHARGED IN CONNECTION WITH FRAUDULENT 'NIGERIAN BARGE' DEAL

WASHINGTON, D.C. – Assistant Attorney General Christopher Wray of the Criminal Division, Enron Task Force Director Leslie R. Caldwell, and Assistant Director Grant Ashley of the FBI's Criminal Investigative Division announced today that a former in-house accountant for the Enron Corporation and a former vice president at Merrill Lynch & Co., Inc., have been charged in connection with the federal government's ongoing probe into the collapse of Enron.

Sheila K. Kahanek, an accountant at Enron and one of the lead employees assigned to effectuate Enron's Nigerian barge transaction with Merrill Lynch, was charged in a superseding indictment with conspiracy to commit wire fraud and falsify Enron's books and records. The same indictment, returned by a federal grand jury in Houston yesterday and unsealed today, also charged William R. Fuhs, a former vice president at Merrill Lynch's Strategic Asset Lease and Finance group, with conspiracy to commit wire fraud and falsify Enron's books and records, false statements and obstruction of the Enron grand jury.

Three leading former employees of Merrill Lynch – Daniel Bayly, James A. Brown, and Robert S. Furst – were indicted in September 2003 on charges of conspiracy to commit wire fraud. Brown was also charged with perjury before the Enron grand jury and obstruction of the grand jury's investigation. The superseding indictment also charges former Enron finance executive Daniel O. Boyle with conspiracy to commit wire fraud. Boyle had previously been charged in an indictment returned by a federal grand jury in Houston in May 2003.

The superseding indictment alleges that Enron and Merrill Lynch engaged in a year-end 1999 deal involving the "parking" of Enron assets with Merrill Lynch. That arrangement allowed Enron to fraudulently enhance the year-end 1999 financial position that it presented to the public; it also enabled certain Enron executives to receive unwarranted bonuses. The indictment alleges that Bayly, Boyle, Brown, Fuhs, Furst and Kahanek, along with co-conspirator Andrew S. Fastow, Enron's then-chief financial officer, knowingly participated in this illegal scheme. Fastow was charged in a May 2003 indictment, and his case is scheduled for trial in April 2004.

According to the indictment, Enron attempted unsuccessfully in 1999 to sell an interest in electricity-generating power barges moored off the coast of Nigeria. Enron then allegedly arranged for Merrill Lynch to serve as a temporary buyer so that Enron could record earnings and cash flow in 1999, making Enron appear more profitable than it was. The indictment states that Enron promised in a secret oral "handshake" side-deal that Merrill Lynch would receive a return on its investment plus an agreed-upon profit within six months, and that Enron would sell the barges to a third party or repurchase the barges within six months – a promise that was hidden from outside parties. On June 29, 2000, having found no true third-party purchaser to buy Merrill Lynch's interest in the barges, Enron arranged for a special purpose entity known as

LJM2, which was controlled by Andrew Fastow, to purchase Enron's interest for \$7,525,000 – fulfilling the side agreement.

The indictment further alleges that in January 2001, Kahanek, who had worked on Enron's Nigerian barge deal team, severely reprimanded an Enron colleague for creating a written document that accurately reflected the oral components of the secret deal between Enron and Merrill Lynch, ordering the employee to destroy all evidence of the oral agreement.

The superseding indictment also adds charges that Fuhs falsely told the FBI he was not aware of a promise from Enron to Merrill Lynch regarding the Nigerian barge transaction. Fuhs also is charged with obstructing the Enron grand jury investigation.

If convicted of the conspiracy charge, all defendants named in the superseding indictment face a maximum sentence of five years in prison. Fuhs also faces a maximum sentence of five years in prison on the false statements charge, and 10 years in prison on the obstruction of justice charge.

An indictment contains an allegation that a defendant has committed a crime. Every defendant is presumed innocent until and unless proven guilty.

Merrill Lynch previously agreed to accept responsibility for any criminal conduct by its employees in the firm's dealings with Enron Corp., and has agreed to cooperate fully with the continuing Enron investigation. Merrill Lynch also agreed to implement a series of sweeping reforms addressing the integrity of client and third-party transactions. Merrill Lynch also agreed that an independent outside monitor – former federal prosecutor George A. Stamboulidis – would oversee its compliance efforts for a period of 18 months, issuing periodic reports to the Department of Justice.

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.

Twenty-five individuals have been charged to date, including 18 former Enron executives. The Task Force investigation is continuing.

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