UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	Civil Action No.
v.	§	**COMPLAINT**
MARK E. KOENIG,	§	
Defendant.	§	

Plaintiff Securities and Exchange Commission for its Complaint alleges as follows:

SUMMARY

1. Mark E. Koenig participated in a scheme to defraud investors in violation of the federal securities laws when he disseminated, and approved the dissemination of, false and misleading information to the public about Enron's business in earnings releases and analyst calls.

2. The Commission requests that this Court order Koenig to pay disgorgement and a civil penalty, enjoin Koenig from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and prohibit him from acting as an officer or director of any public company.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e) and 78aa].

4. Venue lies in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts or transactions constituting the violations occurred in this District.

5. In connection with the acts, practices, and courses of business alleged herein, Koenig, directly or indirectly, made use of the means and instruments of transportation and communication in interstate commerce, and of the mails and of the facilities of a national securities exchange.

DEFENDANT

6. Mark E. Koenig, age 49, resides in Houston, Texas. During the relevant time period, Koenig was employed as Executive Vice-President and Director of Investor Relations at Enron Corp.

ENTITIES INVOLVED

7. Enron Corp. is an Oregon corporation with its principal place of business in Houston, Texas. During the relevant time period, Enron's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. Among other operations, Enron was the nation's largest natural gas and electric marketer. Enron rose to number seven on the *Fortune 500* list of companies. By December 2, 2001, when it filed for bankruptcy, Enron's stock price had dropped in less than a year from more than $80 per share to less than $1.

8. Enron Energy Services (EES) was formed by Enron in late 1996 to provide energy products and services to industrial, commercial and residential customers in both regulated and deregulated markets. In Enron's segment disclosures, EES' results were reported separately as Retail Energy Services.

9. Enron Wholesale Services (Wholesale) was Enron's largest and fastest growing business segment in 2000 and 2001. Wholesale consisted of several business units, including Enron North America (ENA). ENA was the largest and most profitable business unit within Wholesale and included Enron's wholesale merchant energy business related to natural gas and power across North America, including trading, marketing and new asset development activities in that region. In Enron's segment disclosures, ENA's results were reported within the Wholesale Services segment.

10. Enron Broadband Services, Inc. (EBS) was a wholly-owned subsidiary of Enron engaged in the telecommunications business.

FACTUAL ALLEGATIONS

Enron's Manipulation Of Reserves

11. During 2000 and 2001, the profitability of Enron's wholesale energy trading business, primarily based in its Enron Wholesale business unit, dramatically increased for various reasons including rapidly rising energy prices in the western United States, especially in California. This sudden and large increase in trading profits, which exceeded $1 billion, threatened to undermine Enron's description and presentation of itself as the dominant "intermediator" in the energy markets, rather than as a speculative (and therefore risky) trading company whose stock would trade at a much lower price-to-earnings ratio.

12. From the third quarter of 2000 through the third quarter of 2001, Enron used energy trading profits generated in excess of internal budget targets to create a "cookie jar" of unreported earnings for use in future periods. Using reserve accounts within Enron Wholesale to mask the extent and volatility of Enron Wholesale's windfall trading profits, particularly

its profits from the California energy markets, Enron preserved the earnings for use in later quarters in which Enron could use them to meet analysts' expectations and avoided reporting large losses in other areas of Enron's business. By early 2001, undisclosed reserve accounts within Enron Wholesale, which prior to mid-2000 had held only tens of millions of dollars of Enron's energy trading earnings, contained over $1 billion in unreported earnings. Enron planned to and did use hundreds of millions of dollars from the undisclosed reserve accounts to, among other things, ensure that budget targets were met and to conceal hundreds of millions of dollars in losses within Enron's EES business unit from the investing public.

Concealing EES Failures

13. In presentations to the investing public, Enron heavily emphasized the performance and potential of EBS and EES as major reasons for past and projected increases in the value of Enron's stock, attributing as much as half of Enron's total stock value to those two business units. To support what Enron had already said about EES, Enron concealed massive losses in EES's business through fraudulently manipulating Enron's "business segment reporting."

14. Enron accomplished this at the close of the first quarter of 2001 through a reorganization designed to conceal the magnitude of EES's business failure. Enron hid that failure from the investing public by moving large portions of EES's business - which Enron knew at the time otherwise would have to report hundreds of millions of dollars in losses – into Enron Wholesale, which was the Enron business segment housing most of the company's wholesale energy trading operations and income. As Enron knew, Enron Wholesale would have ample earnings, including in the reserve accounts described above, to ensure that Enron

Wholesale could absorb the losses that, in fact, were attributable to EES while at the same time continuing to meet Enron's budget targets. Enron explained the change in segment reporting solely as a means to improve efficiency. It omitted to disclose that the alleged "efficiency" maneuver in fact concealed from the public and others the poor performance of the heavily touted EES business unit. Instead, Enron stated publicly that EES was continuing to perform profitably and as expected.

Concealment of EBS Failure

15. Enron executives and senior managers well knew that EBS was a struggling business that was hemorrhaging money. However, they took steps to ensure that EBS's problems were not publicly revealed. For example, during 2000, Enron structured a series of misleading, one-time financial transactions in EBS that were designed to manufacture earnings that Enron used to present the false impression that EBS was progressing towards generating operating profits. Even with these transactions, EBS still was facing much larger than expected losses during the first quarter of 2001. In order to ensure that EBS did not record in the first quarter of 2001 losses that exceeded Enron's annual budgeted loss target for EBS, and in order to ensure that the quarterly budgeted loss target dictated by management for the first quarter 2001 was met, Enron fraudulently reduced EBS's expenses for the first quarter of 2001. Even with these measures, by March 2001 Enron senior executives knew that EBS's annual losses would be significantly greater than what Enron publicly projected just two months earlier.

False And Misleading Representations To The Investing Public

March 23, 2001 Analyst Call

16. Enron held a special conference call with Wall Street analysts on March 23,

2001 in an effort to dispel growing public concerns about Enron's stock, which had fallen from over $80 per share to under $60 per share in less than two months. An Enron executive knowingly made false and misleading statements, and omitted to disclose facts necessary to make his statements not misleading, in an effort to prop up Enron's stock. Among other things, he stated that "Enron's business is in great shape" and "I know this is a bad stock market but Enron's in good shape," even though both of Enron's showpiece new businesses, EBS and EES, were failing. He stated that Enron was "highly confident" of its income target of $225 million for the year for EES, and that EES was seeing the "positive effect" of "the chaos that's going on out in California." In reality, even EES's existing contracts were overvalued by hundreds of millions of dollars.

17. The Enron executive further stated that EBS "is coming along just fine" and that the company was "very comfortable with the volumes and targets and the benchmarks that we set for EBS." He said that EBS's two profit-and-loss centers, intermediation and content services, were "growing fast" and that EBS was not laying off employees but rather "moving people around inside EBS" and that this was "very good news." In reality, EBS was continuing to fail. Senior personnel at EBS had reported internally that the unit had an unsupportable cost structure and unproven revenue model. Enron and EBS executives also knew that EBS'S annual losses would significantly exceed the targeted losses that it had publicly announced at its January 2001 annual conference.

First Quarter 2001 Earnings Release And Analyst Call

18. Enron issued an earnings release and held its conference call with Wall Street analysts to discuss its first quarter 2001 results on April 17, 2001. An Enron executive made false

and misleading statements in the call and omitted to disclose facts necessary to make his statements not misleading. He talked about continued "big, big numbers" in EES's energy contracting business. He falsely explained Enron's movement of EES's energy contract portfolio into Enron Wholesale, omitting any reference to EES's large losses or their transfer to Enron Wholesale and stated, "[W]e have such capability in our wholesale business that we were -- we just weren't taking advantage of that in managing our portfolio at the retail side. And this retail portfolio has gotten so big so fast that we needed to get the best -- the best hands working risk management there." While Enron reported modest first quarter earnings for EES of $40 million, in reality, EES was facing losses approaching one billion dollars, including losses due to overvalued contracts that were part of its risk books, and had concealed those losses in Enron Wholesale.

19. The Enron executive made further knowingly false and misleading statements about Enron's wholesale energy trading business, and omitted to disclose facts necessary to make his statements not misleading, including that "we remain confident that the situation in California will have no material impact on our financial condition and no adverse impact on 2001 earnings." He refused, when pressed by analysts, to provide any detail or specific numbers regarding Enron's reserves or to explain how Enron's reserves were allotted between EES and Enron Wholesale in order to, as the one analyst requested, gauge the earnings power of the EES risk books, stating only that "we have adequate reserves and other credit offsets in place" to cover any exposure in California. In reality, Enron had concealed for later use hundreds of millions of dollars of year 2000 energy trading profits in reserve accounts within Enron Wholesale and had used those reserves to conceal hundreds of millions of dollars of probable losses to EES.

20. The Enron executive also made knowingly false and misleading statements, and omitted to disclose facts necessary to make his statements not misleading, about the success of EBS. The Enron executive stressed that the reported losses in the unit were on target. In reality, EBS was continuing to fail and was incurring much larger than expected losses that could not be offset with projected future revenues.

21. Koenig also made a false and misleading statement about EBS in the call, and omitted to disclose facts necessary to make his statements not misleading. In response to an analyst's question that he was directed to answer, Koening stated that revenues from a monetization of its content business, as opposed to recurring earnings from operations, were only "about a third" of EBS's overall quarterly earnings. In reality, as Koenig knew, the sale of a portion of EBS's content business was the principal mechanism by which the unit had generated quarterly revenues in 2001. Only a very small percentage of the unit's revenues was due to operations that could be expected to recur. Moreover, EBS had only been able to meet its target of $35 million in losses for the first quarter of 2001 through the combined efforts of the sale of portions of its content services business and the shifting of some EBS expenses to another Enron division.

Second Quarter 2001 Earnings Release And Analyst Call

22. Enron held its conference call with Wall Street analysts to discuss its second quarter 2001 results on July 12, 2001. An Enron executive made knowingly false and misleading statements about the condition of Enron, and omitted to disclose facts necessary to make his statements not misleading, including that Enron had a "great quarter." He further stated that EES "had an outstanding second quarter" and was "firmly on track to achieve our 2001

target of $225 million" in earnings; that losses in EBS were due to "industry conditions" and "dried up" revenue opportunities; and that Enron's "new businesses are expanding and adding to our earnings power and valuation, and we are well positioned for future growth." Koenig misled analysts about the movement of EES's losses into Enron Wholesale by stating, consistent with prior statements by Enron's CEO and in Enron's public SEC filings, that "We just took the risk management functions and combined them because we just -- we were trying to get some more efficiency out of management of the overall risk management function." Koenig made those statements knowing they were not the primary reason for the transfer and that had Enron disclosed the true reason – to conceal hundreds of millions of dollars in EES risk book losses – it would have had a major effect on Enron's stock price.

23. In reality, by the close of the second quarter of 2001, EBS had failed and its increased losses were because it had stopped the one-time sales of portions of its business that had previously been its only significant source of its earnings. As for EES, it was facing hundreds of millions of dollars in concealed losses and was a year or more away from any prospect of success. As a whole, Enron was less than five months from bankruptcy.

Third Quarter 2001 Earnings Release And Analyst Call

24. On October 16, 2001, Enron issued an earnings release and held its conference call with Wall Street analysts to discuss its third quarter 2001 results. In the earnings release and on the conference call, an Enron executive knowingly made false and misleading statements concerning EES. The executive attributed Enron's increased earnings for the quarter to, among other things, "the very strong results" in EES and claimed that the "continued excellent prospects" in EES, as well as Enron's wholesale and pipeline businesses, "make us very confident in our

strong earnings outlook." During the call the executive stated falsely that EES had "an outstanding quarter," and was doing "a tremendous job" of providing revenue "to keep growing this business at very strong growth rates." In reality, EES's risk book losses totaled $655 million for the year and, if disclosed, would have shown that EES was not a successful or profitable business.

Koenig's Participation In And Knowledge Of The Scheme

25. Koenig was Executive Vice-President and Director of Investor Relations for Enron and was responsible for drafting and preparing portions of Enron's earnings releases and analyst call scripts. Koenig reviewed and edited Enron's First, Second, and Third Quarter 2001 earnings releases, and scripts for the March 23, 2001 Analyst Call and the First, Second, and Third Quarter 2001 Analyst Calls.

26. From at least 2001, Koenig knew that certain statements made by Enron senior management, including himself, to investors concerning Enron's finances and business success were intentionally false and misleading, and omitted material information concerning the true state of Enron.

27. During the first quarter 2001, Koenig learned that EES was experiencing significant losses. Koenig knew that Enron had moved large portions of EES's business into Enron Wholesale, Enron's most profitable business unit, to hide the losses related to EES's contracts that should have been reported. Koenig knew that the explanation that Enron gave in its First Quarter 2001 earnings release for the change in business segment reporting, which Koenig reiterated in Enron's Second Quarter 2001 analyst call – to take advantage of Wholesale's risk management function – was not the primary reason for the change and that had Enron disclosed the true reason – to conceal the EES contract losses – it would have had a

“major effect” on Enron’s stock price. These losses, if disclosed, would have shown that EES was not a successful or profitable business.

28. Koenig also learned in advance of the First Quarter 2001 analyst call that over 70% of EBS’s revenues for the First Quarter 2001 were derived from a monetization of its content business, a one-time transaction. Nevertheless, Koenig stated falsely in the First Quarter 2001 analyst call that revenues from the monetization were only "about a third" of EBS's overall revenues.

29. Koenig was aware prior to the First Quarter 2001 analyst call that EES and EBS were not the successful business units as described in Enron’s 2001 earnings releases and analyst call scripts, which Koenig reviewed and edited, and as described by Enron in the analyst calls. Koenig, however, did not correct the false and misleading information that he and other Enron executives and senior managers provided to analysts and investors.

30. In making material misrepresentations and omissions in furtherance of a scheme to defraud, and approving material misrepresentations and omissions that were made, Koenig violated Section 10(b) of the Exchange Act and Rule 10b-5.

CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

31. Paragraphs 1 through 30 are realleged and incorporated by reference herein.

32. Koenig, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or by the use of the mails and of the facilities of a national securities exchange, in connection with the purchase or sale of securities: has employed devices, schemes, or artifices to defraud, has made untrue statements of material facts or omitted to state material

facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or has engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.

33. By reason of the foregoing, Koenig violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

The Commission respectfully requests that this Court:

(A) Grant a Permanent Injunction restraining and enjoining Koenig from violating the statutory provisions set forth here; prohibiting him from acting as an officer or director of any public company; and ordering him to pay disgorgement and civil penalties;

(B) Under Section 308 of the Sarbanes-Oxley Act of 2002, enter an order providing that the amount of civil penalties ordered against Koenig be added to and become part of a disgorgement fund for the benefit of the victims of the violations alleged here; and

C) Grant such other and additional relief as this Court may deem just and proper.

Dated: August ___, 2004

Respectfully submitted,

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Deputy Director, Enforcement Division

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