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Vice President and
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Legal Department

June 28, 2002

**Via Facsimile and Federal Express**

The Hon. Rep. Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives
Congress of the United States
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Waxman:

I am writing in response to your letter of June 3, 2002 requesting that we supplement and clarify the responses that we provided on May 8, 2002 regarding transactions involving Sequoia Financial Assets (the "Sequoia Transactions").

Although we attempted to respond fully to the original questions propounded in your April 12, 2002 letter, we have once again reviewed the pertinent documents to assure that our answers to those questions -- as well as to your additional questions – are complete. Further, we are prepared to provide to you or your staff, on a confidential basis, all relevant and supporting documentation from which our written responses derive.

**1-2. Were the Sequoia transactions – by which I mean the transactions described in the attached diagrams – structured so that Enron held onto the loan "repayments" that Sequoia made to Cherokee and EFP at the end of each month? If your answer to (1) above is "yes," please explain why the transactions were structured so that Enron was effectively able to avoid repaying the monthly loans.**

At the outset, we note that there appears to be a fundamental misunderstanding regarding the 30-day cycle. In your earlier letter, you expressed concern that notes issued by Sequoia Financial Assets ("Sequoia") were repaid at the end of each month and rebooked on the first day of the following month in order to allow Enron to avoid disclosing this debt on Enron's month-end balance sheet. In your June 3 letter, you express further concern that no money exchanged hands at the end of each month and that Enron was allowed to retain the funds as it would if the Sequoia notes were term loans.

The 30-day cycle was not designed to allow Enron to conceal debt. As stated in our letter of May 8, 2002, the funds raised by Cherokee Finance V.O.F. ("Cherokee") and Enron Finance Partners, LLC ("EFP") were used to purchase senior notes in Sequoia, a subsidiary of Enron.

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Sequoia provided financing to Enron through the securitization of Enron trade receivables. In accordance with industry standards, the contracts and accounts regarding these receivables were billed on a monthly cycle. Payments of receivables were generally due within 30 days. The monthly payment and reinvestment cycle for the Sequoia notes coincided with the period during which the third-party receivables became due.

Moreover, the 30-day cycle had *no effect* on the Enron Corp. and Subsidiaries Consolidated Financial Statements ("Enron's Financial Statement"). Under standard accounting principles, in accordance with GAAP, loans from Cherokee and EFP to Sequoia, as intercompany loans, would have been eliminated by consolidation on Enron's Financial Statements. Thus, whether loans extended by Cherokee or EFP to Sequoia were repaid monthly, annually, or on some other time frame, had no bearing on Enron's Financial Statement.

For this reason, among others, whether monies actually flowed from Sequoia's account to Cherokee or EFP at month-end would not impact the financial performance of Enron on a consolidated basis. While Cherokee and EFP each had the *right* under the relevant agreements to demand the return of the proceeds of the Sequoia notes at the end of each 30-day cycle, the parties anticipated that the funds would not actually be transferred from Sequoia to Cherokee or EFP since the funds were slated for reinvestment the following day. Enron, as servicer, maintained records which reflected the repayment of notes and reinvestment in new notes by book-entry, thus avoiding the necessity of transferring funds overnight between the bank accounts for the various entities.

**3. How did the Sequoia transactions raise financing in the form of "minority interest" equity financing?**

As noted in our letter of May 8, 2002, we expected that Enron would report the $1.0 billion in financing provided by Choctaw and Zephyrus as minority interests on its Financial Statements. Since your letter appears to question whether the financings were, in fact, loans, we describe here a number of the equity characteristics of these financings.

Choctaw and Zephyrus were each capitalized with 3% equity and the proceeds of loans extended by bank groups for which JPMorgan served as agent. Choctaw and Zephyrus used these funds to purchase preferred equity interests in Cherokee and EFP, respectively. While the financings provided by the bank group to Choctaw and Zephyrus were loans, the financings provided by Choctaw and Zephyrus to Cherokee and EFP were defined by the agreements governing the preferred equity interests. For instance, if Cherokee failed to make two consecutive quarterly distributions, or was otherwise in violation of certain covenants for a period of 180 days, Choctaw's recourse was to elect a majority of Cherokee's directors.[1] Choctaw's equity interest in Cherokee was not secured by a security interest in Cherokee's assets, as would be the case in a typical secured loan situation.

[1] The terms of Zephyrus' membership interest in EFP are similar.

Moreover, the bank group's right to take over these equity interests in the event of a default under the loan to Choctaw did not give it a security interest in the assets of Cherokee. Under the applicable agreements, neither the acceleration of the debt due from Choctaw to the bank group, nor the unwinding of the investments by Cherokee in Sequoia, required the redemption of Choctaw's preferred interest in Cherokee. In other words, if the banks were to foreclose on Choctaw's equity interest in Cherokee, exercise Choctaw's rights to elect a majority of the board of directors, and instruct the directors to discontinue the automatic repurchase of notes of Sequoia, the resulting funds held by Cherokee could *not* be used to redeem the preferred interest of Choctaw, unless (1) the partnership agreement was amended or Cherokee was dissolved which would require the approval of Seminole, an Enron-controlled entity; or (2) judicial intervention.

**4. Who was responsible for creating and designing the Sequoia transactions, Enron or JPMorgan?**

The format for the Choctaw investments in Cherokee was based on widely used structures for minority interest equity financing that evolved over time, and cannot be attributed to any single source. The credit support provided by the Sequoia Transactions was integrated into the minority interest financing jointly by JPMorgan and Enron and their financial and legal advisors, again adopting widely used models from the asset-backed securities marketplace. Enron was responsible for creating and designing Zephyrus, which was modeled after Choctaw.

**5. What justification do you have for your statement that the Sequoia transactions involved "a well-established means used regularly by large corporations to meet their capital needs"?**

In our letter of May 8, 2002, I indicated that minority interest equity financing was a well-established means used regularly by large corporations to meet their capital needs.

Goldman Sachs popularized trust preferred securities, a form of minority interest equity financing. These hybrid instruments, with debt and equity characteristics, include the issuance of preferred stock from a financial subsidiary. We understand that, since Goldman Sachs introduced this product, virtually every major investment banking firm has offered similar forms of minority interest equity financing. Billions of dollars in minority interest equity financing have been issued for companies in virtually every industry.

**6. To what extent has JPMorgan arranged transactions, or offered to arrange transactions, for other clients that are similar or identical to the Sequoia transactions?**

JPMorgan has been involved in numerous other minority interest equity financings. Of these, the Sequoia Transactions were the only minority interest equity financing tied to receivables resulting in the 30-day repayment and reinvestment cycle.

7. **If, as you state, Enron effectively controlled Cherokee and, accordingly, consolidated Cherokee on its financial statements, why did Enron not list Cherokee as a subsidiary in its annual reports?**

JPMorgan had no involvement in, or responsibility for, the preparation of Enron's annual reports, and we have no information about how Enron determined which entities to reflect as subsidiaries on such reports.

8. **How much money did JPMorgan loan to or invest in Choctaw and Zephyrus?**

JPMorgan's share of the $500,000,000 Choctaw facility was $45,000,000. Its share of the Zephyrus facility was $46,345,000. In addition, JPMorgan invested $3,685,000 in preferred certificates of Zephyrus.

9. **How much money did JPMorgan receive from its loan(s) to or investment(s) in Choctaw and Zephyrus?**

JPMorgan realized a *total* revenue of $12,121,479 from the Sequoia Transactions which includes the approximately $11,500,000 for the services described in our letter dated May 8, 2002, interest on the loans, and dividends on the preferred certificates. However, no portion of the loans to Choctaw and Zephyrus was repaid. The Bank faces an exposure of $91,345,000 with respect to those facilities. Its preferred certificates in Zephyrus are worthless.

We have numerous boxes of documents relating to the Sequoia Transactions. Should you or your staff be interested in reviewing these documents on a confidential basis, we will be pleased to make them available to you.

Respectfully submitted,

Ahuva Genack

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