

Enron & MD&A Off-Balance Sheet Arrangement Disclosure

(&)

*

2003 7

1. Introduction

2001 Enron
1997 IMF
WorldCom¹, Global Crossing², Health
South³, Xerox⁴, Tyco⁵, Adelphia⁶

* ((02) 398-4567, yangms@whlaw.co.kr)
paper
¹ 2002 6 25, WorldComm, Inc. \$38, 7
21 \$110, WorldComm
Mr. Ebberts가 First
Interim Report of Dick Thornburgh, Bankruptcy Court Examiner, November 4, 2002, *In re WorldCom, Inc.* <http://elaw4enron.com> WorldCom 2002 11 4
, Second Interim Report of the Examiner 2003 6 9

² 2002 1 28 Global Crossing
(barter)

<http://www.nwfusion.com/news/2002/0208globalx.html>

³ SEC 2003 3 19 HealthSouth Corp. Richard Scrushy \$14
<http://www.cbsnews.com/stories/2003/03/19/health/main544606.shtml>

⁴ SEC Xerox KPMG KPMG가 Xerox 3 \$60
2003 2

<http://finance.pro2net.com/x36945.xml>

⁵ Tyco International Ltd. SEC, 2002 10 Tyco
\$20
\$60

<http://news.corporate.findlaw.com/business/s/20030606/manufacturingtycoshareholdersdc.html>

2003. 6. 16.
⁶ 가 \$23 2002 6
<http://www.latimes.com/business/la-fi-adelphia25jul25.story>

가

2002 Sarbanes-Oxley Act ,
 .⁷ Sarbanes-Oxley Act 1933 1934 Securities
 Exchange Commission (“SEC”) Securities Act Securities Exchange
 Act 가 . Sarbanes-
 Oxley Act
 , 가
 . , Enron 가 가 off-balance
 sheet arrangement , Sarbanes-Oxley Act 401
 SEC off-balance sheet arrangement

2003 1 , SEC off-balance sheet arrangement
 (Management’s Discussion and
 Analysis - MD&A)

2 Enron 가 ,
 , 3 SEC가
 off-balance sheet arrangement ,
 4 Enron 가 가 가
 , 가 가 가

2003. 6. 16. .
⁷ Sarbanes-Oxley Act paper . Sarbanes-Oxley
 Act of 2002: (가 2002.7.30. “
 ”), , 2002.10.

1. Introduction.....	1	3.5 What is off-balance sheet arrangement?.....	33
2. Enron	3	3.5.1 Guarantees	33
2.1 Enron	3	3.5.2 Retained or Contingent Interests	35
2.2 Enron	4	3.5.3 Certain Derivative Instruments..	35
2.2.1	4	3.5.4 Variable Interests	36
2.2.2 SPE	6	3.6 Disclosure Threshold	37
2.2.3 MTM	9	3.7 Disclosure about Off-Balance Sheet Arrangements	37
2.2.4 Mezzanine	10	3.7.1 Off-balance sheet arrangement	38
2.2.5	12	3.7.2 Arrangement	38
2.2.6	13	3.7.3 Arrangement	38
2.3	13	3.7.4 Arrangement	39
2.3.1 True Sale	14	3.7.5	39
2.3.2 Substantive Consolidation	17	3.8 Tabular Disclosure of Contractual Obligations	39
2.4 Enron	18	3.9 Foreign private issuers	40
2.4.1 Pre-Pay.....	20	3.10 Enron 가	40
2.4.2 Share Trust.....	22	4.	41
2.4.3 Minority Interest	24	4.1	41
2.4.4 Tax	26	4.1.1 SPE	41
2.4.5 Related Party.....	27	4.1.2 MTM	42
2.4.6 FAS 140	28	4.1.3 Sale of financial asset; ; true sale.....	42
3. MD&A	30	4.1.4 Mezzanine	45
3.1 Rule Principle	30	4.1.5 Enron	45
3.2 MD&A	30	4.2	45
3.3 Enron	32		
3.4 New Rule.....	32		

2. Enron ⁸
2.1 Enron

2001 7 Enron
가 , . 1985
Houston Natural Gas InterNorth Enron
가 , 가

⁸ Enron Enron
Neal Batson, Court Appointed Examiner가 ,
Second Interim Report of Neal Batson (“Second Interim Report”), January 21, 2003. *In re Enron Corp., et al.*, US Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 01-16034 (AJG)
. Interim Second Report <http://www.elaw4enron.com> Enron ,
2003 3 5 .

1989 \$46.3 1994 \$89.8 , 1999
 \$401.1 ⁹, 2000 \$1,000 .

Enron
¹⁰,
 가 가 (1)
 , (2) , (3) , (4) , (5)
 (6) .¹¹
 , Enron

가
 Enron energy trading
 “asset light”
 financial management ,
 , 2001 가
 Enron 가 ,
 issue .

2.2 Enron
 2.2.1

가

¹²

⁹ John Thompson, vice president, Office of the Chairman, Enron, Europe, 2000 6 29 , Zurich presentation , “Enron’s Evolution from a U.S. Gas Pipeline Monopolist to a Global Internet based Commodity Market Maker,” http://www.actienbank.com/newsfiles/eic_inv_may00_enr.pdf 2003.5.26.

¹⁰ Enron Chief Operating Officer Jeff Skilling 2000 analysts conference call Enron \$25 , . Second Interim Report, at 17.

¹¹ Id., at 20.

¹² Consolidated Financial Statements, Accounting Principles Bd. Opinion No. 51 (Financial Accounting Standards Bd. 1959) (“ARB 51”), *superseded by* Consolidation of All Majority-Owned Subsidiaries, Statement of Financial Accounting Standards No. 94 (Financial Accounting Standards Bd. 1987) (“FAS

)
 13, 가
 ,
 .
 (1),
 , (2) . (1),
 (2), (3), (4)
 20%
 (5) 가
 . 가
 14
 .
 가 partnership, partnership 가 general partner
 (가 partnership
 .), limited partner
 15, general partner partnership
 partnership 가 .¹⁶

94”), amended by Accounting for the Impairment or Disposal of Long-Lived Assets, Statement of Financial Accounting Standards No. 144 (Financial Accounting Standards Bd. 2001) (“FAS 144”). FAS 144

. *Second Interim Report Appendix B (Accounting Standards) note 39* .
¹³ Investor’s Accounting for an Investee when the Investor Has a Majority of the Voting Interest but the Minority Shareholder of Shareholders Have Certain Approval or Veto Rights, 2 EITF Abstracts (FASB) 96-16 (July 23, 1998) (“EITF 96-16”). *Second Interim Report, Appendix B, n. 42, p. 14* .

¹⁴ 22 .

¹⁵ EITF 96-16.

¹⁶ Partnership general partner, limited partner (limited partnership) partnership partnership general partner partnership general partner가 partnership partnership (Accounting for Investments in Real Estate Ventures, Statement of Position 78-9 (American Institute of Certified Public Accountants, 1978)), 1998 EITF working group SOP 78-9 EITF 96-16 (substantive participating rights) , EITF . Enron 1998 Share Trust Transaction . *Second Interim Report, Appendix B, pp. 21~24* .

2.2.2 SPE

Purpose Entities¹⁷, “SPE”) , Enron (Special
 SPE
 Enron Enron
 . Enron SPE Enron
 , SPE가
 가

SPE sponsor (“sponsor”)
 , SPE 가 sponsor
 , SPE
 sponsor
 가 .¹⁸

, SEC SPE 가 sponsor 3
 , SPE , SPE 3%¹⁹
 , sponsor가 SPE sponsor

¹⁷ SPE . “SPEs typically are defined as entities created for a limited purpose, with a limited life and limited activities, and designed to benefit a single company. They may take the legal form of a partnership, corporation, trust, or joint venture. SPEs began appearing in the portfolio of financing vehicles that investment banks and financial institutions offered their business customers in the late 1970s to early 1980s, primarily to help banks and other companies monetize, through off-balance-sheet securitizations, the substantial amounts of consumer receivables on their balance sheets.” AI L. Hartgraves & George J. benston, “The evolving accounting standards for special purpose entites and consolidations (Commentary),” *Accounting Horizons*, Sept 2002, v. 16, i. 3, pp. 245-258, http://www.bus.iastate.edu/cjeffrey/495/Accounting_Horizons-SPE-Clem.doc 가 . SPE
 SPE Accounting Research Bulletin No. 51 (1959), APB Opinion No. 18 (1971), FASB Statement No. 94 (1987), FASB Statement Nos. 76 & 77 (1983), EITF Issue No. 84-30 (1984), EITF Topic D-14 (1989), EITF Issue No. 90-15 (1990), FASB Statement No. 125 (1996), FASB Statement No. 140 (2000) 가 . SPE

<http://www.trinity.edu/rjensen/theory/00overview/speOverview.htm>.
¹⁸ Transactions involving Special-Purpose Entities, 2 EITF Abstracts (FASB) D-14 (May 31, 1990) (“EITF Topic D-14”), *Second Interim Report, Appendix B, n. 82, p. 26* .

¹⁹ FIN 46 variable interest entity , 3%가 10% . 2003.2.1.
 . FIN 46 §§9-10. 89 .

SPE *Enron*

Enron SPE 3% Enron

3 가 97% SPE , SPE

 3% SPE 가 Enron ,

SPE 가 Enron 21 SPE ,

Enron 가 , Enron

 SPE Enron

Enron SPE 가 partnership ,

 Enron 가 partnership Enron

 Enron 가 SPE , 가

partnership , partnership general partner가 Enron

 가 Enron 22

partnership limited partner Enron general partner

 , partnership limited partner , limited

partner Enron SPE Enron

 piercing of corporate veil

SPE

²⁰ 1997 12 , SEC Chief Accountant Professional Accounting Fellow Armando Pimenta가 AICPA Annual Conference

²¹ Related Party Disclosures, Statement of Financial Accounting Standards No. 57 (Financial Accounting Standards Bd. 1982) (“FAS 57”), *Second Interim Report, Appendix B, p. 17, n. 50* . 가 EITF 96-16

²² FAS 57. 3 (1)

 가 , (2) (principal owners) 가 , (3)

 (4) 가 가 3

 (arm’s length transaction)

가 . Enron 가 SPE Enron
 GAAP .

가

20 SEC
 SPE , sponsor SPE sponsor
 . , SPE 가 sponsor 가 , SPE
 3% , sponsor SPE total return swap
 SPE sponsor가
 . Enron , SPE가 97%
 15% sponsor Enron
 total return swap ,
 sponsor

Enron . Examiner SPE
 가 SEC guideline
 , Enron
 15% SPE
 SEC , SEC Enron
 가 SPE .²³ SEC
 Enron 가 97% TRS
 SPE 3%
 . SEC
 , SEC Enron
 SEC
 가 . Examiner 15%
 SEC 가 가

가 .
 SEC accounting office 가 Andersen
 Enron Enron 가 SPE
 가 SEC가 Enron TRS
 . Sponsor

²³ SEC Accounting staff Andersen 1999 10 14 . Second Interim Report, Appendix B, p. 36, n. 115 .

가 SPE 3 가 SPE 3%

(1)

(2) , SPE 1

가 . Enron 가 SPE 97% TRS ,

SPE 1 , SPE 97%

SPE 가 ,

TRS Enron 가 SEC가 1997

EITF Topic D-14 . Examiner

2.2.3 MTM

1980 가 forward trading , 가

가 가

가 가 energy

가 가

Enron 1991 SEC Enron 가 가

가 가

mark-to-market (“MTM”) (가)

,²⁴ SEC . MTM 가

, 가 가

Enron SEC 가 , 가 trading

MTM 가 , pulp commodity

, 1996

MTM 가 Enron 가 partnership

. 가, 1997 Enron merchant banking

, 1999 2000 energy commodity

MTM 가 .

FASB 1998 energy trading 가

²⁴ Letter from Jack L. Tompkins, Senior Vice President and Chief Financial Officer, Enron Corp., and George W. Posey, Vice President, Finance & Accounting, Enron Gas Services, to George H. Diacont, Acting Chief Accountant, SEC, and Robert Bayless, Associate Director, Office of Chief Accountant, SEC, June 11, 1991. *Second Interim Report*, p. 23, at n. 59 .

1998 FASB MTM 가 Enron energy commodity MTM 가 GAAP MTM 가 1998 energy commodity MTM 가 MTM 가 GAAP 2000 Enron 가 \$655 MTM 가 \$228 35% 5% 가 \$11

MTM 가 Enron 가 MTM 가 Enron 가 merchant banking MTM 가 energy MTM 가 merchant banking Enron 3 merchant banking 가 가 Enron 가 SPE 가 3 internet 가 on-line vod MTM 가 SPE 가 Enron SPE 가

2.2.4 Mezzanine

SEC 3가 .²⁷ (1)

²⁵ EITF 98-10, *Accounting for Contracts Involved in Energy Trading and Risk Management Activities*. *Second Interim Report*, p. 25

²⁶ , 가 (earnings) quality MTM Enron

off-balance sheet

²⁷ Redeemable Preferred Stock, SEC Accounting Series Release No. 268, 44 Fed. Reg. 45,610 (July 27, 1979), *Second Interim Report, Appendix B*, p. 49, n. 139

3 가 , (2) 가 , (3) 가 , (minority interest) 가 , (company obligated preferred stock – “COPS”)

COPS 1990 가 , - , 28 , , Minority interest COPS / , , 가 2가 , COPS 가 가 , minority interest , Enron SPE가 , 가 Enron , Enron SPE가 Enron SPE SPE Examiner . SEC SPE가 가 , 가 line item “Company obligated mandatorily redeemable security of subsidiary holding solely parent

²⁸ Second Interim Report, Appendix B, pp. 50-1.

debentures”

²⁹

Enron
SPE

minority interest

COPS

가

2.2.5

GAAP

3가

: (1)

,

,

, (2)

(3)

³⁰

3가

, GAAP

.

,

,

.

가

가

. Enron

, 1980

energy trading

,

가

,

, SPE

GAAP

.

, Enron

SPE Enron

가

, SPE

가 GAAP

,

가

²⁹ SEC Div. of Corp. Finance, *Current Issues and Rulemaking Projects*, at 85 (November 14, 2000), available at <http://www.sec.gov/pdf/cfcr112k.pdf>, *Second Interim Report, Appendix B, p. 53*.

³⁰ Statement of Cash Flows, Statement of Financial Accounting Standards No. 95 (Financial Accounting Standards Bd. 1987), Statement of Cash Flows – Exemptions of Certain Enterprises and Classification of Cash Flows from Certain Securities Acquired for Resale, Statement of Financial Accounting Standards No. 102 (Financial Accounting Standards Bd. 1989), *Second Interim Reports, Appendix B, p. 66, n. 180 & n. 181*.

Enron 가 SPE 가
 , Enron 가
 , Enron
 SPE가 .

2.2.6

(control) , (surrender of control)
 .³¹

3가

. (1) ;

. (2)

. (3)

(1)

, (2) (3) 3

.³²

Enron 가 SPE , Enron

TRS

, 3가

(1)

2.3

Enron Enron 가 SPE ,
 SPE Enron

³¹ Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities, Statement of Financial Accounting Standards No. 125 (Financial Accounting Standards Bd. 1996) (“FAS 125”), Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities, Statement of Financial Accounting Standards No. 140 (Financial Accounting Standards Bd. 2000) (“FAS 140”), *Second Interim Report, Appendix B, p. 57, n. 161* .

³² Elements of Financial Statements, Statement of Financial Accounting Concepts No. 6 (Financial Accounting Standards Bd. 1985) (“FAC 6”), *Second Interim Report, Appendix B, pp. 61-2* .

Enron
 3
 SPE Enron
 Enron
 , Enron
 , Enron SPE Total
 , Enron TRS Enron
 . TRS Enron
 SPE SPE
 Enron Enron
 , Enron 가 SPE
 , Enron 가 SPE
 Enron
 가
 “ ”
 가 가 .

2.3.1 True Sale

Enron Enron 가 SPE 가
 , SPE Enron
 Enron 가 .. ,
 Enron SPE
 Enron 가 .
 가 (“True Sale”)
 . Enron SPE 3 가 true sale
 , true sale
 가 33 .

33

, true sale

case by case true sale

34

가 true sale

(1)

, (2)

, (3)

, (4)

, (5)

, (6)

(7)

35

Enron

, Enron

가

SPE

,

Enron

가 SPE

TRS

.

TRS

가

,

TRS

가 Enron

(common control)

가

, TRS

Enron 가

가

Capitalism

가

, limited partnership, trust

, limited

partner, beneficiary

³⁴ *Second Interim Report, Appendix C (Legal Standards), p. 4.*

가

³⁵ *Second Interim Report, Appendix C, pp. 8-9.*

가
 , 가
 ,³⁶
 piercing the corporate veil alter-ego doctrine ,
 가 ,
 가 ,
 ,
 ,
 37
 38
 Enron , ,
 SPE
 Enron . , SPE
 Enron
 true sale ,
 Enron Examiner
 .
 가 true sale ,

³⁶ Delaware 102(b)(6)

California , 1931
 . (Blumberg, “Limited Liability and Corporate Groups, 11 J. Corp. Law 573 (1986), in William Cary & Melvin Aron Eisenberg, Corporations, Cases and Materials, 6th ed., the Foundation Press, Inc., 1988)

³⁷ 가 100% 가 100% ,
 corporate veil piercing

³⁸ 가 가
 (Walkovszky v. Carlton, 18 N.Y.2d 414, 276 N.Y.S 2d 585, 223 N.E.2d 6 (Ct of App. NY 1966)),

(*In re Best Prods. Co.*, 157 B.R. 222 (Bankr. S.D.N.Y. 1993), *Second Interim Report, Appendix C, p. 20*). 가 paper ,
 . (*Nat’l Dairy Prods. Corp. v. United States*, 350 F.2d 321 (8th Cir. 1965), *vacated on other grounds*, 384 U.S. 883 (1966), *Second Interim Report, Appendix C, p. 20*)

가 . Enron true sale

2.3.2 Substantive Consolidation

Piercing the corporate veil alter ego doctrine

3 substantive consolidation “equity” 1905
39 1978 substantive consolidation 105 40 “
equity equity
true sale piercing the corporate veil alter ego doctrine substantive consolidation
piercing the corporate veil substantive consolidation
가 가 consolidation
(1) consolidation
(2) consolidation
(3)
consolidation 가

(4) consolidation

consolidation 가
consolidation

41

Second Circuit 42 substantive consolidation

³⁹ *In re Muncie Pulp Co.*, 139 F. 546 (2d Cir. 1905), *Second Interim Report, Appendix C, p. 34* .

⁴⁰ 11 U.S.C. Sec. 105.

⁴¹ *Drabkin v. Midland-Ross Corp. (In re Auto-Train Corp., Inc.)*, 810 F.2d 270 (D.C. Cir. 1987), *Second Interim Report, Appendix C, p. 36* .

⁴² (District Court), (Court of Appeals) (Supreme Court)
12 , 2 (Second Circuit)

가 , Second Circuit

substantive consolidation

(1)

consolidation

(2)

consolidation

⁴³

consolidate

Substantive Consolidation

가

가

consolidation

⁴⁴

Enron

가 true sale

, SPE

SPE

Enron

SPE

, substantive consolidation

, Enron SPE substantive consolidation

가

2.4 Enron

2001 10 16 , Enron

Kenneth Lay

3/4 after-tax non-recurring

\$10.1

, Enron

, 11 8

가

⁴³ *Second Interim Report, Appendix C., p. 53-4, Union Savings Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.), 860 F.2d 515 (2d Cir. 1988)*

⁴⁴ *Second Interim Report, Appendix C, pp. 57-64.*

1997 2000
, 2001 2/4 \$5.86 .

2001 11 19 , Enron Enron
. 2001 3/4 \$129.7
off-balance sheet 가 \$251.16

Enron Examiner Enron 2000 Enron
off-balance sheet arrangement GAAP

Enron 가 , ,
Enron \$9.79 , \$9.37 ,
\$42.3 95.7% 가
\$30.1 , \$31.6
\$1.54 .

Enron (debt) \$102.3 ,
\$220.6 215.7% . 2000
off-balance sheet arrangement

2000 (\$Mil)

	979.0	(936.7)	42.3
	3,010.0	(3,163.9)	(153.9)
	(4,264.0)	(958.6)	(5,222.6)
	571.0	4,123.5	5,116.4
	65,503.0	4,123.5	69,626.5
Debt	10,229	11,830.7	22,059.7
	40,486	(3,260.9)	37,225.1
Mezzanine			
Min Int	2,414.0	(1,443.6)	970.4
COPS	904.0	-	904.0
Equity	11470.0	(3,002.7)	8467.3

Enron 2001 12 2 ,

⁴⁵ Second Interim Report, Appendix Q (Schedules Depicting Impact of Enron's Six Accounting Techniques), p. 1.

Examiner Enron off-balance sheet arrangement 가
 (1) Pre-Pay , (2) Share Trust , (3) Minority Interest , (4)
 Tax , (5) Related Party (6) FAS 140 .
 6가 .

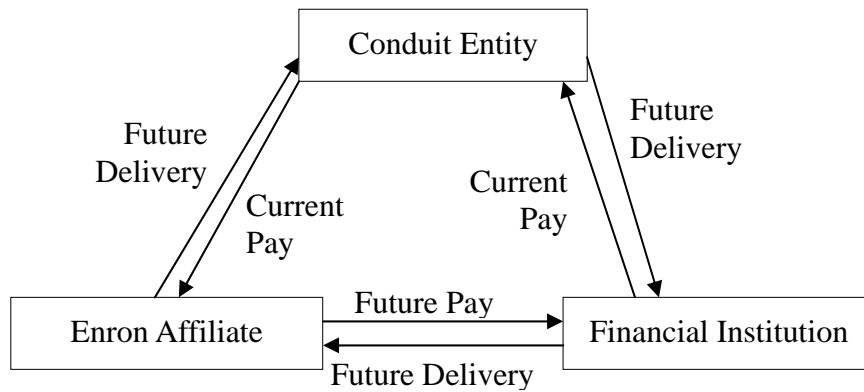
2.4.1 Pre-Pay

1992 2001 Enron circular forward
 \$86 .
 가 , Enron 가 commodity forward
 Enron \$50 , 1997 2001
 100% 2000 32% Enron
 \$1 4,800 .

Pre-Pay

46

Basic Pre-Pay Structure



Pre-Pay SPE가 forward .
 Forward SPE가 commodity
 . SPE Enron forward

⁴⁶ Second Interim Report, p. 63.

Enron . Enron
 SPE forward
 circle forward
 commodity Enron Enron
 SPE 3
 Enron

Enron SPE
 Letter of Credit SPE
 Pre-Pay J.P. Morgan Citibank , SPE
 J.P. Morgan Citibank
 Enron 가 SPE가 forward ,
 J.P. Morgan Citibank가 가
 commodity forward

⁴⁷ , J.P. Morgan Citibank

⁴⁸ J.P. Morgan

⁴⁷ Citibank, J.P. Morgan Chase Enron
 aid & abet () Examiner
 Examiner Enron \$55
 equitable subordination 가
 Third Interim Report of Neal Batson, Court Appointed Examiner, June 30, 2003, available at <http://www.elaw4enron.com> with other documents released on July 28, 2003. Equitable subordination

, Citibank, Morgan Chase 가

⁴⁸ SEC J.P. Morgan Chase Citigroup Enron Dinegy
 settle 2003.7.28. settlement SEC가 Chase
 Citigroup Enron Dinegy
 Enron Dynegy 가 aiding
 and abetting () Chase Citigroup
 , Chase , Cigroup
 Chase \$1.35

Citigroup \$1.01 . See *In the Matter of Citigroup, Inc.*, SEC Release No. 34-48230, Accounting and Auditing Enforcement Release No. 1821, Administrative Proceeding File No. 3-11192 (July 28, 2003) available on <http://www.sec.gov/litigation/admin/34-48230.htm>; “SEC Charges J.P. Morgan Chase In Connection with Enron’s Accounting Accounting Fraud”, Litigation Release No. 18252, Accounting and Auditing Enforcement Release No. 1820, Securities and Exchange Commission v. J.P. Morgan Chase & Co., Case No. H-03-28-77 (MH) (S.D. Tx.) (July 28, 2003) available at <http://www.sec.gov/litigation/litreleases/lr18252.htm>; and “Banks to Settle Fraud Claims in Enron-Related Case”, New York Law Journal, by Tom Perrotta (July 30, 2003) available at <http://www.law.com/jsp/article.jsp?id=1058416435845> accessed on July 30, 2003.

\$10 , \$6 2003 1 2 .
 Citibank . Citibank
 Enron Pre-Pay
 \$15 .⁴⁹

Enron Pre-Pay commodity 가
 Pre-Pay
 , forward commodity

GAAP Pre-Pay 3
 Pre-Pay
 .⁵⁰

2.4.2 Share Trust

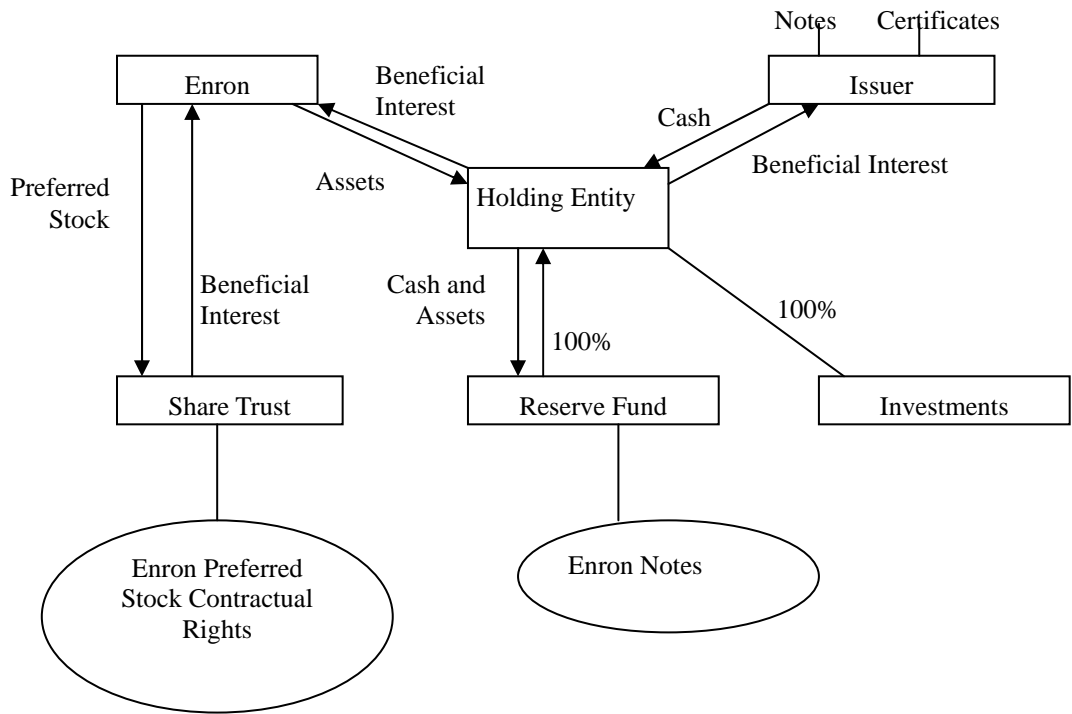
Enron Share Trust \$38 ,
 \$11 ,
 \$21 . Enron Share Trust ,

Share Trust .⁵¹

⁴⁹ “Morgan and Insurers Settle Enron Dispute for \$600 Million” The New York Times, January 3, 2003, http://snde.rutgers.edu/Rutgers/Econ394/jpmorgan_enron_settlement.html, accessed on June 8, 2003.

⁵⁰ Second Interim Report, p. 66.

⁵¹ Second Interim Report, p. 70.



(Issuer) (Notes Certificates) (Holding Entity) Enron

(Reserve Fund) (Investments) Enron

Enron (Share Trust) trust (Issuer)

Enron 가

Share Trust Whitewing Marlin 2가 가

Marlin , Enron , Marlin

\$11.5 , \$9 Enron 가
 , \$2.5 Enron
 . Marlin , Enron 가
 Marlin (Holding Entity) Enron
 Marlin
 Marlin substantive consolidation
 .⁵²

Enron Whitewing
 Marlin ,
 . Marlin , Whitewing credit line
 revolving credit facility . 1999
 \$15 2000 가 \$10.8
 . Enron Examiner Whitewing
 , Enron 가

true sale
 .⁵³ Examiner Whitewing (Holding Entity)가
 Enron , Whitewing

Whitewing Marlin , 가
 Enron 가 ,
 .
 , GAAP

Enron .⁵⁴

2.4.3 Minority Interest

Minority Interest Enron
 hybrid
 가

⁵² Second Interim Report, p. 71.

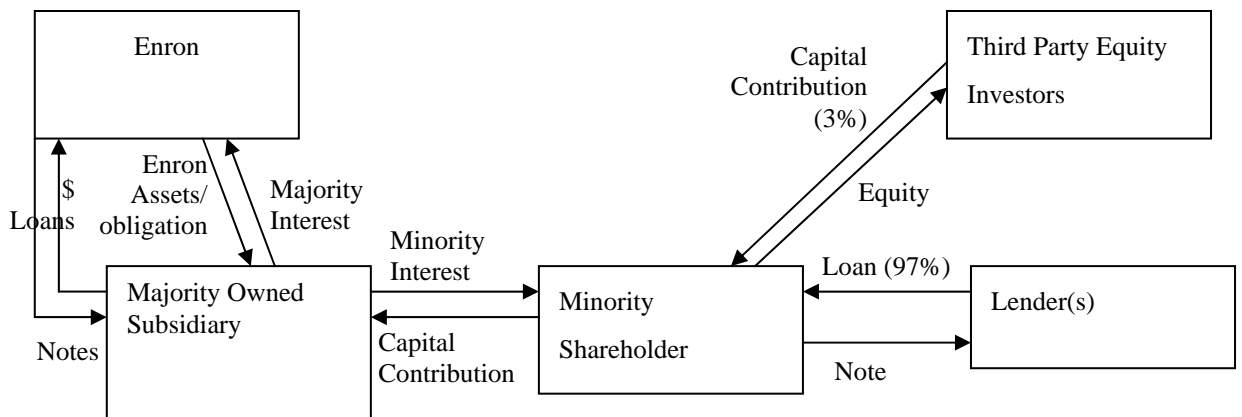
⁵³ Second Interim Report, p. 75.

⁵⁴ Second Interim Report, p. 77.

\$5 Enron \$27.5 \$7.5

Minority Interest

55



Enron (Minority Shareholder) Enron (Subsidiary) SPE 3%
 Enron 3 가 , SPE
 97%

Enron
 Enron

Enron

Enron Examiner

Enron
 true sale
 / hybrid

, Minority Interest

Rawhide

56

3%

3

Enron

partnership

Enron

Enron

⁵⁵ Second Interim Report, p. 80.

⁵⁶ \$7.5

. Second Interim Report, p. 83.

2.4.4 Tax

Enron GAAP
 1995 2001 \$8
⁵⁷ Examiner ⁵⁸ ,

Enron GAAP
⁵⁹ 가
 credit GAAP , (Real
 Estate Mortgage Investment Conduit – “REMIC”)가
 가 가 . REMIC
 ,
 , REMIC partnership
 가 , REMIC
 가 가 , GAAP
 가 , Enron
 GAAP ⁶⁰ 가 , Enron
 (\$1.3)

⁵⁷ Second Interim Report, p. 87.

⁵⁸ Second Interim Report, Appendix J (Tax Transactions).

⁵⁹ Internal Revenue Services

⁶⁰ , GAAP

GAAP 가 Enron (\$1.3)

2.4.5 Related Party

1997	2001	Enron	Enron	Enron	Enron
				Enron	가
				\$15	
, 2000	\$15	, 2001	6	\$19	
, 1999	\$8.9	, 2000		\$8.3	. ⁶¹
Enron	Related Party	Enron	, Enron	가	MTM
가		Enron			가
	. ⁶²				
Related Party		Enron	Enron	MTM	가
				Enron	
	SPE				Enron
Enron	SPE	Enron	가		가
가가					SPE
		, SPE			
SPE	Enron	가			
		Enron	가	SPE	
Enron	가				
	, Enron		가		
		Enron	SPE		
				3	SPE
		SPE	가		
Enron					SPE

⁶¹ Second Interim Report, p. 104.

⁶² Second Interim Report, Appendix L (Related Party Transactions), p. 7 & p. 15.

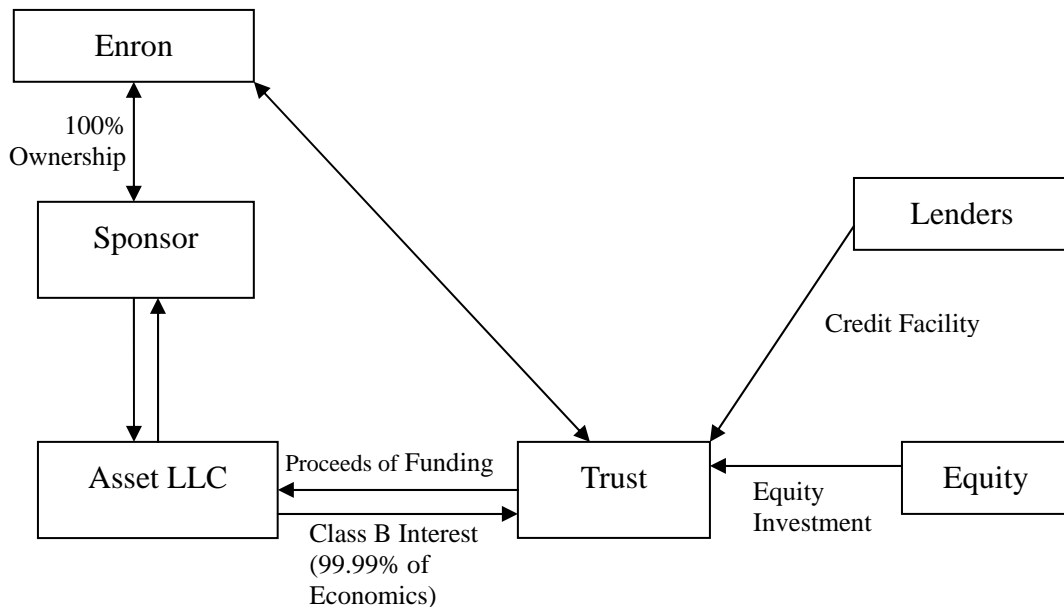
Enron 가 가 가 , 가 가 , .
 , Enron 가 Related Party SPE
 3 3% , SPE
 Enron SPE , SPE
 Enron .⁶³
 , SPE
 .⁶⁴

2.4.6 FAS 140

FAS 140 ⁶⁵ Enron
 . Enron FAS 140
 \$3.5 , \$12
 \$11 , \$8.6
 , \$8.9 .⁶⁶
 FAS 140 .⁶⁷

⁶³ Second Interim Report, Appendix L, pp 23-27.
⁶⁴ Second Interim Report, pp. 105-6.
⁶⁵

Enron FAS 125 FAS 140
 . FAS 125 Accounting for Transfers and Servicing of Financial
 Assets and Extinguishments of Liabilities, Statement of Financial Accounting Standards No. 125
 (Financial Accounting Standards Bd. 1996) (“FAS 125”) , FAS 140 Accounting for
 Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, Statement of Financial
 Accounting Standards No. 140 (Financial Accounting Standards Bd. 2000) (“FAS 140”) , FAS
 140dms 2001 4 1 FAS 125 . Second Interim Report, p. 107, n. 1996 .
⁶⁶ Second Interim Report, p. 108.
⁶⁷ Second Interim Report, p. 110.



Trust() SPE , 3%

Enron 3 ,

SPE Trust .

SPE Trust가 Enron

Sponsor Trust SPE가 .

Enron Trust SPE가 .

Enron TRS

Enron

, TRS

, true sale ,

, Enron 가

⁶⁸ Second Interim Report, p. 111.

3. MD&A

3.1 Rule Principle

Enron GAAP GAAP GAAP (principle)

Enron 69

Enron

SEC

(management’s discussion and analysis – “MD&A”)가

GAAP

, MD&A SEC가

principle

3.2 MD&A

Enron Regulation S-K Item 303 MD&A Regulation S-K MD&A SEC

“ quality

69 Second Interim Report, pp. 51-2.

70 SEC Interpretation: Management’s Discussion and Analysis of Financial Condition and Results of Operation; Certain Investment Company Disclosures, Rel. Nos. 33-6835, 34-26831, IC-16961, FR-36 (May 18, 1989) at §III.A, available at http://www.sec.gov/rules/interp/33-6835.htm, (“1989 Interpretative Release”), Second Interim Report, Annex 1 (Disclosure Standards Applicable to Enron’s SPE Transactions) to Appendix D (Enron’s Disclosure of Its SPEs), p. 4

“The MD&A requirements are intended to provide, in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant’s prospects for the future.”

, SEC

(narrative)

. MD&A

.

. MD&A

(dynamics)

” 71

Regulation S-K MD&A

.

■ :

○

가

○

○

○

○

, off-balance sheet ,

■

○

(line item)

○

○

(continuing operation)

■

○

,

⁷¹,1989 Interpretative Release, §III.A, Second Interim Report, Appendix D, Annex 1, p. 10 .

The Commission has long recognized the need for a narrative explanation of the financial statements, because a numerical presentation and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company. The Item asks management to discuss the dynamics of the business and to analyze the financials.

Citing a concept release, Securities Act Release No. 6711 (April 24, 1987) [52 FR 13715], which preceded a project on MD&A. From the project, this 1989 Interpretative Release was produced..

-
-

3.3 Enron

Enron MD&A
 100%)
 Enron Enron GAAP
 MD&A 72

3.4 New Rule

SEC Sarbanes-Oxley Act 401 2003 1
 27 off-balance sheet MD&A
 73
 (“ ”)
 , SEC 74
 , SEC 가 75
 MD&A
 off-balance sheet

⁷² Second Interim Report, Appendix D, pp. 115-7.

⁷³ Final Rule: Disclosure in Management’s Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations, Release Nos. 33-8182, 34-47264, FR-67 (January 27, 2003), <http://www.sec.gov/rules/final/33-8182.htm>. (“Release No. 33-8182”)

⁷⁴ (1) 가
 (2) 가 , 가
 가 . Exchange Act Rule 3b-4
 (17 CFR 240.3b-4), Release No. 33-8182 n. 131

⁷⁵ SEC , Sarbanes-Oxley Act 401(a) SEC . Release No. 33-8182 §III.G.

3.5 What is off-balance sheet arrangement?

Off-Balance Sheet arrangement

⁷⁶, (1) , (2) 3 가

, (3) 3 가 , (4)

3 가 , 3 variable

interest () .

3.5.1 Guarantees

GAAP

GAAP

GAAP MD&A

Off-Balance Sheet Arrangement

⁷⁶ Regulation S-K, item 303(a)(4)(ii) Off-Balance Sheet Arrangement

(ii) As used in this paragraph (a)(4), the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant has:

(A) Any obligation under a guarantee contract that has any of the characteristics identified in paragraph 3 of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (November 2002) ("FIN 45"), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FIN 45 pursuant to paragraphs 6 or 7 of that Interpretation;

(B) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(C) Any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in stockholders' equity in the registrant's statement of financial position, and therefore excluded from the scope of FASB Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (June 1998), pursuant to paragraph 11(a) of that Statement, as may be modified or supplemented; or

(D) Any obligation, including a contingent obligation, arising out of a variable interest (as referenced in FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (January 2003), as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

GAAP, FASB Interpretation 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (November, 2002) ("FIN 45")⁷⁸ 3 6 7

FIN 45 3 4가 , 1가 .

□ Underlying 가 , "Underlying" 가, commodity 가 , stand-by L/C, 가 , 가 SPE가 L/C FIN 45

□ 3 가 3 ("performance ")가 .⁸⁰

□ Underlying (indemnification) . (indemnification)⁸¹

□ 3 . ,

⁷⁷ Release No. 33-8182, §III.A.1.

⁷⁸ 2003 1 1 .

FIN 45 (1) , (2) , (3) , (4) 가 .

⁷⁹ Release No. 33-8182, n. 83, *Fin 45 at fn. 2* .

⁸⁰ FIN 45, ¶ 4.

⁸¹ FIN 45, ¶ 4.

3 가 , 3 가

FIN 45 6 7 FIN 45
 (1) , (2)

⁸², (3) , (5) 3 ⁸³, (4)

⁸⁴ 가

⁸⁵, (6) , (7)

(8)

⁸⁶

3.5.2 Retained or Contingent Interests

가 가 , 가 가 3

3 ,

3.5.3 Certain Derivative Instruments

off-balance sheet arrangement , 가

가 가 가

⁸⁷ 가

SEC ,

⁸² FASB Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (June 1998)

⁸³ FASB Statement of Financial Accounting Standards No. 141, *Business Combinations*.

⁸⁴ FASB Statement of Financial Accounting Standards No. 13, as amended by FASB Statement of Financial Accounting Standards No. 145.

⁸⁵ FASB Statement of Financial Accounting Standards No. 13, *Accounting for Leases*.

⁸⁶ FIN 45, Summary & ¶¶ 6 & 7.

⁸⁷ SFAS No. 133.

가

가

MD&A

88

3.5.4 Variable Interests

3 variable interest
 “Variable interest” 3 89
 90

⁸⁸ Item 5.E.2(c) of Form 20-F (17 CFR 249.220f), *See Release No. 33-8182, § III.A.3.*

⁸⁹ 3 FIN 46 variable interest entity
 Variable interest entity (1)
 (2) 가

FIN 46, ¶ 5.

⁹⁰ FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (January 2003) (“FIN 46”), at ¶ 2c. FIN 46

Accounting Research Bulletin No. 51, *Consolidated Financial Statements* (“ARB 51”)

off-balance sheet arrangement ARB 51

Variable Interest Entities primary beneficiary

, primary beneficiary variable interest entity
 FIN 46 2003 2 1 variable interest entity

variable interest 2003 6 15
 2003 7 1 3/4

SPE primary beneficiary가 , FIN 46 가

FIN 46 가
 “Industry prepares for consolidation bombshell”, Michael Evans, Legal Media Group, Euromoney, June 8, 2003, <http://www.legalmediagroup.com/news/print.asp?SID=12678&CH=> 2003. 6. 10.

Primary Beneficiary (1) variable interest entity , , (2)
 가 variable interest entity , (3) variable interest

entity primary beneficiary
 Primary beneficiary가 (significant) variable interest

(1) variable interest entity , , (2)

3.6 Disclosure Threshold

off-balance sheet arrangement
off-balance sheet arrangement
("reasonably likely to occur")
가
off-balance sheet arrangement 가
(material)
가
(reasonable) .⁹¹
"reasonable"
가
3

3.7 Disclosure about Off-Balance Sheet Arrangements

off-balance sheet arrangement
가
가 Off-balance sheet arrangement가
Off-balance sheet arrangement
가
off-balance sheet arrangement (1)
, (2) , (3) , (3) arrangement (4)

, (3) variable interest entity

. *FIN 46, Summary.*

⁹¹ Release No. 33-8182, § III.B.

가 .

3.7.1 Off-balance sheet arrangement

off-balance sheet arrangement
arrangement . arrangement 가
arrangement . , off-balance sheet arrangement

.⁹²

3.7.2 Arrangement

off-balance sheet arrangement가 ,
, arrangement가
arrangement ,
, 가 가 ,
.⁹³

3.7.3 Arrangement

off-balance sheet arrangement
(revenues), (expenses), off-balance
sheet arrangement가 , arrangement
, arrangement ,
.⁹⁴

⁹² Release No. 33-8182, § III.C.

⁹³ Id.

⁹⁴ Id.

3.7.4 Arrangement

arrangement off-balance sheet
(
) , , ,
, arrangement
, arrangement가
가
, arrangement
. 95

3.7.5

GAAP
,
, arrangement
arrangement
가 off-balance sheet arrangement
가 arrangement
arrangement 가 .⁹⁶

3.8 Tabular Disclosure of Contractual Obligations

1 , 1-3 , 3-5 5
, capital , operating ,
. ⁹⁷

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Release No. 33-8182, § III.D.

GAAP

3.9 Foreign private issuers

Sarbanes-Oxley Act 401 SEC

SEC

SEC

가

, off-balance sheet arrangement

GAAP

GAAP

가

SEC

GAAP

GAAP

⁹⁸

3.10 Enron

가

GAAP

off-balance sheet arrangement

off-balance sheet arrangement

MD&A

Enron

GAAP

가

가

, Enron

MD&A

가

SEC

Enron

MD&A

(principle based)

⁹⁸ Release No. 33-8182, § III.G.

off-balance sheet arrangement

, Enron

arrangement

off-balance sheet

4.

4.1

4.1.1 SPE

6

, “

”

“ ”

“ 가

.”⁹⁹

1 3

(1)

, (2) 30%

, (3) 50%

, (4)

50%

(5) ,

GAAP

, GAAP

가

가

가

SPE가 partnership , limited partner가 general partner

general partner partnership

가 SPE

, SPE

⁹⁹

, 3

102

가

가 가

(가), () ()가

가

GAAP

Enron

Enron

가

true sale

1.

2.

가

3.

가 가

가

가

가

4.

()

103

true sale

가

SPE sponsor가

102

4 , 13 .

103

, 13 .

104 가 105 3

4

가 Enron 가 TRS TRS

가 , 4

가 off-balance

sheet arrangement Enron 가

TRS , SPE

가 (), (sponsor)

sponsor 가 , 가 ,

가 sponsor가

가 , 가

가 sponsor

가 , Enron SPE

off-balance sheet off-balance

sheet 가

SPE – sponsor가

sponsor 3 가 SPE 10%

sponsor primary beneficiary가

104 sponsor가 30%

가 100%

105 Sponsor 가 , 가 가

가 가 100 .

- 가

4.1.4 Mezzanine

가 가 , minority interest COPS .

4.1.5 Enron

Enron 가 SPE SPE 가 3 SPE SPE 가 . , SPE SPE SPE , SPE SPE

SPE , 가 .

Enron 가 가 commodity merchant investment MTM 가 minority interest COPS GAAP , 가

4.2

가 “ 가 , ” , “ ,

¹⁰⁶ 가
 가 ,
 MD&A principle line item 가 ,
 off-balance sheet arrangement 가
 Enron 가 off-balance sheet ,
 SPE ,
 , SPE
 Enron SPE 가 ¹⁰⁷ ,
 가 ,
 MD&A 가

¹⁰⁶ ,
¹⁰⁷ , 3.6, III.
 [31-74], 2(1) .