

TESTIMONY**STATEMENT OF CATHERYN GRAHAM
ON BEHALF OF HEWITT ASSOCIATES**

SUBMITTED TO
THE COMMITTEE ON GOVERNMENTAL AFFAIRS

OF
THE UNITED STATES SENATE ON FEBRUARY 5, 2002

Mr. Chairman and Members of the Committee, my name is Catheryn Graham and I am an Engagement Manager with Hewitt Associates LLC (“Hewitt”). I am based in Hewitt’s office in The Woodlands, Texas, which is located just north of Houston. I appear before you today on behalf of Hewitt at the invitation of this Committee to discuss Hewitt’s role as the successor record keeper for the Enron Corp. Savings Plan (the “Enron 401(k) Plan”). Hewitt Associates is a leading provider of human resources outsourcing and consulting services. Headquartered near Chicago, Illinois, we employ about 13,000 associates who work in 37 countries. Our client roster includes more than two-thirds of the *Fortune 500* and more than a third of the *Global 500*.

Hewitt believes it is entirely appropriate for this Committee to examine issues related to Enron’s 401(k) Plan and I am pleased to provide this testimony voluntarily to assist the Committee in the exercise of its oversight responsibility. Let me say at the outset that our role with respect to the Enron 401(k) Plan is limited to serving as its record keeper. This includes daily plan processing; administration of loans from the plan; performing compliance testing mandated by or under various provisions of the Internal Revenue Code; operating a call-in center and web site to respond to participant inquiries regarding their account balances and activity; preparing and mailing participant statements; and preparing the annual Form 5500 report required by the Internal Revenue Service. Hewitt did not create or design of Enron’s 401(k) Plan; nor was it our decision whether or when to change record keepers. Our responsibility was and continues to be providing Enron with record keeping services of the highest quality.

The Enron 401(k) Plan is governed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). As with all plans subject to ERISA, the Enron 401(k) Plan has an employer sponsor, Enron Corp. The sponsor of an ERISA benefit plan is responsible for making decisions regarding the establishment and design and possible termination of the plan.

Each ERISA benefit plan must be embodied in a written document. That document either names fiduciaries or specifies a procedure by which the plan sponsor designates certain individuals or groups of individuals as plan fiduciaries. A plan fiduciary is a person who (i) exercises discretionary authority or control over the management of the plan or authority or control over management or disposition of the plan’s assets, (ii) renders investment advice for a fee or other compensation, or (iii) has discretionary authority or control over the administration of the plan (such as making determinations as to the eligibility for participation in the plan, benefit claims determinations, and the retention of service providers to aid in the operation of the plan). The actions of a plan fiduciary are subject to stringent rules of conduct set forth in ERISA, including the requirement that the fiduciary act solely in the interests of plan participants and their beneficiaries. Each plan has a named fiduciary called a Plan Administrator charged with overall responsibility for the plan. The Plan Administrator

of the Enron 401(k) Plan is the Administrative Committee, which is comprised of a group of Enron employees appointed to the Committee by Enron.

Each ERISA 401(k) Plan must, by definition, have a trust in which the plan's assets are held. In the case of the Enron 401(k) Plan, the trustee holds the plan's assets consisting of both employee and employer contributions. In the 401(k) plan context, each participant directs the investment of his or her plan account according to the plan design as determined by the Plan Sponsor. The trustee holds, transfers and disburses those assets pursuant to each participant's individual direction, but has no discretionary authority over the investment of those assets. The trustee of the Enron 401(k) Plan was the Northern Trust Company until November 2001, when the Wilmington Trust Company became the trustee.

Finally, each ERISA 401(k) Plan has a record keeper whose responsibility is to maintain the records of the plan and perform certain related services such as providing reports to the plan participants. The record keeper in the case of the Enron 401(k) Plan was Northern Trust Retirement Consulting Services ("NTRC") until November 2001, when Hewitt assumed that position. As a general matter, the role of the record keeper with respect to any plan is purely ministerial in nature. That is, it is not intended to confer any discretionary authority upon the person or firm providing that service.

Hewitt's Administrative Services Agreement ("Agreement") with Enron specifies the mutual understanding of Hewitt and Enron that Hewitt is not a plan fiduciary within the meaning of ERISA and that Hewitt has no discretion with respect to the management or administration of the Enron 401(k) Plan or changes to or interpretations of plan rules or policies pertaining to eligibility or entitlement of any participant to benefits under the plan. Under the Agreement, Hewitt also has no control or authority over any assets of the Enron 401(k) Plan, including the investment of those assets. Finally, the Agreement provides that all discretion and control with respect to the terms, administration or assets of the Enron 401(k) Plan shall remain with Enron or with the plan's fiduciaries.

Let me now turn to the events relating to the selection of Hewitt as the record keeper for the Enron 401(k) Plan and the transfer of those responsibilities to Hewitt. Prior to June 2001, Hewitt's relationship with Enron consisted primarily of providing actuarial services for Enron's defined benefit pension plan and data consolidation and production services for reports to benefit plan participants. In early 2000, Enron retained the services of a third party evaluator (Watson Wyatt) to manage the process by which other firms would be selected to provide services in connection with several of the Enron benefit plans, including the record keeper for the Enron 401(k) Plan. This process began in March 2000. In May 2000, Hewitt submitted a bid to provide plan record keeping services for Enron's defined contribution plans (including the 401(k) Plan), defined benefit plan, and health and welfare plans. However, Enron thereafter opted not to change the record keeper for its defined contribution plans at that time. Hewitt was not chosen to provide record keeping services for the other Enron plans.

Enron renewed the bid process in February 2001 and Hewitt was asked to update its earlier proposal. As Enron was seeking a "bundled solution", meaning Enron was looking for both a record keeper and trustee, Hewitt obtained a quote from Wilmington Trust Company. Hewitt and Wilmington Trust Company made submissions in response to the Enron request. Enron selected Hewitt as the record keeper in May 2001. After an independent review, Enron accepted Wilmington Trust Company to be the new trustee. Hewitt and Enron signed a letter of intent in June 2001. The letter of intent contemplated that Hewitt would begin work immediately, as I will describe in a moment, and ensured that Hewitt would be compensated for the work it performed if a formal contract was not ultimately executed. I was designated as the Engagement Manager for the Enron 401(k) plan assignment and our team began work

immediately.

On June 28, 2001, we met with representatives of Enron's Benefits Department to review our "Delivery Model". This is a document which describes the services we would normally expect to provide as record keeper, additional services we could provide and a list of the services we do not provide, such as legal, tax and investment advice. In this meeting, we reviewed the Delivery Model in detail to make a preliminary determination of what services would be provided by Hewitt with respect to the Enron 401(k) Plan. On June 29, 2001, we held a similar meeting to discuss nonqualified benefit plans for which Hewitt had also been selected as the record keeper.

In July 2001, we began the "Requirements Process" with respect to the Enron 401(k) Plan. This was a detailed and comprehensive process intended to identify exactly what services and administrative processes we would in fact provide as record keeper and how and when we would provide them. During the Requirements Process, we also needed to address the issues arising out of Enron's desire for a "live date", completion of the transition process, in October 2001. The "live date" is the date on which participants in the 401(k) Plan would be able to direct any transactions available to them under the terms of the Plan (e.g. withdrawals, loans and changes in investments) with Hewitt as the record keeper. At that time, Enron's proposed "live date" was October 23, 2001.

As part of the Requirements Process, we had to identify all of the tasks that needed to be completed and establish target dates for each of those tasks in light of Enron's proposed live date of October 23, 2001. This involved Enron and the service providers: Hewitt, Wilmington Trust Company (the new trustee), Northern Trust (the old trustee), and NTRC (the old record keeper). In the case of large plans such as the Enron 401(k) plan, a transition period, commonly referred to as a blackout period, is standard. A blackout period is designed to ensure accuracy of the data transferred by the old record keeper and to enable the new record keeper to transfer the data to its system and confirm its operational integrity. Trustees need to follow a similar process if trustees are changing. During all or portions of this period, plan participants are restricted in their ability to deposit or withdraw funds or to change their investments.

With respect to the Enron 401(k) Plan, the Enron Benefits Department, following consultations with the service providers, established a blackout period that would begin on September 14, 2001 and end on the live date of October 23, 2001. The planned blackout period was two-tiered: (1) participants were restricted from taking loans, withdrawals, rollover contributions and the like from the close of trading on September 14, 2001 to October 23, 2001, and (2) participants were restricted from changing investments in the fund options provided in accordance with the Plan, including the Enron Corp. stock fund, from the close of trading on September 26, 2001 through October 23, 2001.

The Requirements Process continued through September 2001 as we focused not only on the transition issues, but also on how the Plan would be administered following the transition. Indeed, the overwhelming majority of our time was devoted to the post-transition administration issues. These issues included building an internet site for the Plan; setting up a voice response system; establishing a benefits center and training its personnel; establishing a communications system with the trustee and fund managers; and other similar tasks.

In mid-August 2001, we found it necessary to revisit the transition issues, including the timing of the blackout period. Specifically, we received a telephone call from the Enron Benefits Department indicating that Enron decided to make several plan design changes. Among other things, Enron had decided to convert three investment fund options from Vanguard funds to Fidelity funds. In addition, the Enron 401(k) Plan provided two investment fund options involving Enron-related stock, one

for Enron Corp. stock and one for the stock of its former subsidiary EOG Resources, Inc. Contrary to our original expectations, Enron opted not to combine these two options. By reason of these and other changes, Hewitt was required to rework certain of its previously completed programming.

We estimated that these and other proposed changes by Enron would require two to three weeks additional work. We were informed by the Enron Benefits Department that the open enrollment period for Enron's health benefit plan was scheduled for the period November 1-19, 2001 and that the Benefits Department preferred that the live date for the 401(k) plan occur after the expiration of open enrollment period for the health benefit plan. As a result, the live date for the 401(k) plan was rescheduled by Enron from October 23, 2001 to November 20, 2001, with the asset transfer date to the new trustee set for November 1, 2001 and the blackout period for loans, withdrawals, rollover contributions, etc. set to begin at the close of trading on October 19, 2001 and continue through November 19, 2001. A participant's ability to change his or her investment among the fund options as provided in the Enron 401(k) Plan, including the Enron Corp. stock fund, would be limited for a shorter period from close of trading October 26, 2001 through November 19, 2001.

We completed the Requirements Process and in late September 2001 Enron approved the final requirements documentation. This documentation spelled out in great detail the way in which Hewitt would provide services as Enron's new record keeper and included such items as sample correspondence, responding to communications from plan participants, flow charts showing how work would move through our record keeping system and so on. Thus, by the end of September 2001, we had reached agreement with the Enron Benefits Department on how we would handle the transition and how we would perform our services as record keeper following the live date. On September 26, 2001, more or less simultaneous with the completion of the Requirements Process, Enron and Hewitt executed the Administrative Services Agreement, thus ending our work under the letter of intent that had been executed some months earlier. This time sequence in signing a final agreement was typical of the process that occurs in cases where a large benefit plan changes record keepers.

As plan sponsor, Enron was responsible for notifying plan participants of the changes in trustee, record keeper and certain investment options. At Enron's request, Hewitt drafted a communication for Enron's review. Enron revised the draft and Hewitt incorporated the changes directed by Enron, obtained Enron's final approval of the text and design and then had the communication mailed on October 4, 2001, using address lists provided by Enron and NTRC. At this point in time, Hewitt had not received population data from which it could have prepared mailing labels. A copy of that communication is attached to this testimony. I understand that there were other communications by Enron, but Hewitt did not participate in the preparation, review or distribution of those communications and, to my knowledge, did not see any of them until after they had been distributed to participants.

As I indicated earlier, the blackout period for loans, withdrawals, etc. actually began after the close of trading on October 19, 2001. The blackout period for changes in investment options, including the Enron Corp. stock fund, was scheduled to begin after the close of trading on October 26, 2001.

On October 25, 2001, after the first phase of the blackout period had begun, Hewitt was contacted by a member of the Enron Benefits Department posing a few questions. Specifically, we were asked about the systems issues and similar practical consequences of accelerating the live date by shortening the blackout period. We were also informed that Enron's counsel had concluded that Enron had met its fiduciary obligations under ERISA with respect to the implementation of the blackout period. We were asked to comment. Finally, Enron mentioned the possibility that they could just postpone the whole conversion for some period of time.

Enron asked that we respond to these questions that same day and we did so. With respect to accelerating the live date, we pointed out a series of risk considerations. These risks included the adverse effects on plan participants of commencing our record keeping activities with incorrect plan data due to a shortened review period and the possible compromising of the quality of the services we could provide to plan participants. In addition, we noted that similar data quality issues could arise with respect to the new trustee's reconciliation process.

With respect to Enron's conclusions about compliance with ERISA's fiduciary responsibility principles, we said that, following a brief consultation, one of our internal legal consultants concurred in Enron's views. We cautioned, however, that Enron needed to rely on its own legal counsel because Hewitt, as a consultant, does not provide legal advice. Finally, we discussed some of the factors Enron would want to consider in deciding whether to delay the transition period in its entirety. These factors included extra cost, staffing implications, and the inability to predict whether the Enron stock would be any less volatile. We also made clear that we would work with Enron to accommodate any changes it might decide to make in the schedule.

Later on October 25, 2001, a member of Enron's Benefit Resources Department called to notify us that a determination had been made that the transition would go forward on the then current schedule. This meant that the restrictions on changes in investment allocations would take effect at the close of business on the next day, October 26, 2001. Of course, as I have noted, the first phase of the blackout period had already begun on October 19, 2001.

On October 30, 2001, Enron's Benefits Department contacted Hewitt and requested that members of the Hewitt team attend a meeting of the Administrative Committee on November 1, 2001. On November 1, 2001, two of my colleagues from Hewitt and I attended portions of a meeting of the Enron Administrative Committee. We had been asked to be prepared to discuss whether it would be feasible to shorten the blackout period by accelerating the live date to November 13, 2001. We informed the Administrative Committee that Hewitt could meet this more accelerated time table, but we indicated that our actual ability to do so was obviously dependent on the receipt of the necessary data from NTRC, the existing record keeper, in a timely fashion and in reliable and compatible form. We received the data transfer from NTRC on November 7, 2001 and, four business days later, Hewitt met the accelerated live date of November 13, 2001.

At the meeting on November 1, 2001, the Administrative Committee also asked Hewitt whether it would be feasible to halt the process in place and have Northern Trust and NTRC simply reassume their respective duties as trustee and record keeper until a later date. We responded that the asset transfer to Wilmington Trust already had occurred that morning and that only Northern Trust/NTRC could advise Enron whether such a course of action was feasible. By the end of the meeting the Administrative Committee instructed Hewitt to continue and to seek to have an accelerated live date.

On November 8, 2001, at the request of Enron, a postcard was mailed by Hewitt to participants indicating that an effort was underway to shorten the blackout period and urging them to monitor the Enron web site for news as to live dates and other pertinent information. A copy of that communication is attached to this testimony. Again, Hewitt used the address lists provided by NTRC and Enron. Hewitt then completed its work, as did Wilmington Trust, and the Enron 401(k) Plan went "live", with Hewitt as record keeper, on November 13, 2001.

Let me conclude, Mr. Chairman, with the observation that for Enron, as with all our clients, we provided professional services of the highest quality. Our associates worked diligently and responsibly to implement the decisions the client made. In our role as the record keeper, our associates could not and should not make those

decisions. We welcome this opportunity to make our knowledge of the facts available to the Committee and I would be pleased to respond to any questions the Committee may have.

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