

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES SECURITIES	§	
AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
	§	Civil Action No. H-05-398
v.	§	
	§	COMPLAINT
TIMOTHY A. DESPAIN,	§	
	§	
	§	
Defendant.	§	

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

SUMMARY

1. Timothy A. DeSpain, a former Assistant Treasurer of Enron, violated the federal securities laws by disseminating false and misleading information to national credit rating agencies about Enron’s business and financial condition. The Commission requests that this Court enjoin DeSpain from violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 10b-5, 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,

DeSpain, 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. Timothy A. DeSpain was an Assistant Treasurer of Enron from approximately January 1999 until May 2002. DeSpain reported to and was supervised by Enron's Treasurer and others. As part of his duties, DeSpain coordinated interactions between Enron Senior Management and the national credit rating agencies that rated Enron's corporate debt. DeSpain also regularly communicated directly with those agencies. On October 5, 2004, DeSpain plead guilty to one count of conspiracy to commit securities fraud related to Enron's dissemination of false and misleading information to national credit rating agencies about Enron's business and financial condition. United States v. DeSpain, Cr. No. H-04-449 (S.D. Tex.).

ENTITY 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.

FACTUAL ALLEGATIONS

8. Enron's credit rating was directly related to Enron's ability to borrow money, and maintaining an investment grade rating was essential to Enron's ongoing business operations. In rating Enron's debt, the credit rating agencies relied on, among other things, Enron's public filings, including its financial filings with the Securities and Exchange Commission. The credit rating agencies also relied on statements and information provided by Enron's senior management, including DeSpain. Enron's senior management and DeSpain understood that the two primary factors influencing Enron's credit rating were the total amount of Enron's debt and other debt-like obligations, as well as the cash flow Enron generated from operations to satisfy those obligations. From 1999 through the Fall of 2001, DeSpain, as an Assistant Treasurer, was directed by his superiors to engage in and did engage in conduct that DeSpain recognized was intended to manipulate fraudulently Enron's credit rating.

9. In communicating with representatives of the credit rating agencies, DeSpain and others at Enron made false and misleading statements regarding Enron's financial position and cash flow. Among other things, DeSpain and others at Enron falsely represented to credit rating agencies that Enron's cash flows from its non-regulated businesses were stable and predictable. This was not the case. Enron experienced significant shortfalls in cash flow from its operating activities. Instead of disclosing Enron's true cash flow situation to the rating agencies, DeSpain and others falsely disclosed annual cash flow targets that were arbitrarily based on what DeSpain and others believed was necessary to maintain Enron's investment-grade credit rating.

10. In order to achieve those arbitrarily selected cash flow numbers, Enron entered into complex structured finance transactions that DeSpain and others did not properly disclose to

the rating agencies.

11. For example, in late 1999 Enron entered into a transaction known internally as Project Nahanni which had no business purpose other than to make up a \$500 million shortfall in Enron's publicly targeted cash flow for 1999. Project Nahanni involved the sale of \$500 million of Treasury securities. Enron improperly reported the sale as cash flow from "operations." At the time of the transaction, DeSpain and others at Enron knew that if the rating agencies understood that the \$500 million of cash flow from operations for 1999 was from the sale of Treasury securities, Enron's credit rating would have been negatively affected, and Enron would not have received a desired upgrade in its credit rating. Nevertheless, DeSpain and others at Enron did not reveal the true nature of the transaction or its purpose to the credit rating agencies and, instead, falsely led the rating agencies to believe that the funds generated by Project Nahanni came from operating activities.

12. Enron also used transactions known internally as "prepays" to achieve Enron's artificial cash flow targets. Enron accounted for the cash received in these transactions from financial institutions as commodity transactions, but in substance the transactions created debt-like obligations to the financial institutions. DeSpain and others falsely led the rating agencies to believe that Enron was generating cash by selling assets, when in fact Enron was generating cash by incurring a future obligation that operated as debt. Over the course of DeSpain's time as Assistant Treasurer, Enron's obligations under the prepay transactions grew to approximately \$5 billion. Enron's Treasurers directed DeSpain not to reveal to, or discuss with, the credit rating agencies, the nature and extent of the prepay transactions entered into by Enron, and DeSpain complied with this direction. DeSpain and the Treasurers recognized that if the rating agencies

knew about the nature and extent of Enron's prepay transactions, such information would have had a materially negative effect on Enron's credit rating.

13. DeSpain and others also falsely represented to the rating agencies that Enron's communications with the rating agencies were direct and candid, and that there was a "no secrets policy" with the rating agencies. In fact, as DeSpain knew, Enron's communications with the rating agencies were not direct and candid. To the contrary, DeSpain and others intentionally made false statements to the rating agencies about Enron's true financial performance and about the way in which Enron achieved its cash flow numbers. If the rating agencies were aware of the true nature of Enron's cash flows, such information would have had a materially negative effect on Enron's credit rating.

CLAIM FOR RELIEF

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

14. Paragraphs 1 through 13 are realleged and incorporated by reference herein.

15. DeSpain, 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.

16. By reason of the foregoing, DeSpain violated Section 10(b) of the Exchange Act

[15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [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 DeSpain from violating the statutory provisions set forth here;
- (B) Prohibit DeSpain from acting as an officer or director of any public company; and
- (C) Order such other relief as may be appropriate, including disgorgement and civil penalties.

Dated: February 8, 2005

Respectfully submitted,

s/

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