The **Enron Watchdog Campaign** *is a project of the State Public Interest Research Groups (PIRGs), a national association of state-based advocacy organizations advancing an agenda of environmental health, good government and consumer protection.*

# Industry Associations Oppose Senate Legislation to Prevent "Another Enron"

**March 11, 2002**

On March 6, 2002, Senator Dianne Feinstein (D-CA) provided the first opportunity for the Senate to pass meaningful reform to help prevent another Enron-like debacle. This reform, offered as an amendment to the pending Senate energy legislation, would re-regulate the energy derivatives transactions that played such a key role in Enron's implosion. However, several powerful industry associations have come out publicly in opposition to Senator Feinstein's proposed reform. The Senate, which could vote on Senator Feinstein's amendment as early as Tuesday, March 12th, should stand firm against industry pressure and pass Senator Feinstein's amendment to bring more transparency to the energy trading market.

## Energy Derivatives and the Enron Collapse

Derivatives are highly-leveraged transactions, many of which are extremely complex and difficult to understand—even for seasoned securities traders and investors. The financial world uses these contracts to hedge against the risk of price fluctuations or to speculate. Enron also used them to inflate its balance sheet and hide debt. So-called over-the-counter derivatives have grown sevenfold during the past decade and are now a key risk-management tool for nearly every business, from automakers wanting to pin down future borrowing costs to banks wanting to minimize losses from interest-rate changes.

Enron used over-the-counter derivatives extensively in order to hide the nature of just what it was doing to make money. Now, far too many former employees, investors and retirees are paying the price for Enron's desire to operate through murky, confusing, and unregulated transactions. In addition, as the stock market roils, energy companies are having difficulty raising capital to fund investments in future energy production. Given the misunderstanding pervading the investor community over derivatives and the precipitous collapse of Enron, derivatives merit closer scrutiny by federal regulatory authorities.

## Restoring Clarity, Stability, and Oversight to the Energy Sector

Energy derivatives were regulated until just two short years ago. In December 2000, Senator Phil Gramm (R-TX) co-sponsored the Commodity Futures Modernization Act, which exempted energy derivatives trading and electronic trading platforms from regulatory oversight. In the words of James Ridgeway of the *Village Voice*, it passed "without undergoing the usual committee hearings and preliminary votes. (The act) was immediately attached as a rider to an 11,000-page appropriations bill. It passed and was signed into law by President Clinton six days later."

It did not take long for Enron Online and others in the energy sector to take advantage of this new loophole by trading energy derivatives absent any regulatory oversight or transparency. As a result, about 90% of energy trades representing purely financial transactions are not regulated by either the Federal Energy Regulatory Commission (FERC) or the Commodity Futures Trading Commission (CFTC).

Senator Feinstein's amendment would repeal the provisions of the Commodity Futures Modernization Act exempting energy derivatives from regulation, providing price transparency when energy derivatives are traded and giving the CFTC oversight authority for such transactions. This amendment would help ensure that over-the-counter traders of energy derivatives operate with proper federal oversight, fostering a more stable market with transparent transactions. The CFTC, an agency already charged with overseeing investment instruments such as derivatives, has the expertise to handle the complexity of these transactions and to develop the necessary protections. Moreover, Senator Feinstein's amendment requires the cooperation of FERC, providing an additional safety net for the investing public.

## The Opposition

Several corporations, exchanges and trade associations representing the energy sector support the Feinstein amendment, including the New York Mercantile Exchange, Chicago Mercantile Exchange, Cambridge Energy Research Associates, American Public Gas Association, American Public Power Association, Pacific Gas and Electric, Calpine, Mid-America Energy Holding Company and Texas Independent Producers and Royalty Association. Thomas J. Erickson, commissioner of the Commodity Futures Trading Commission, and Pat Wood, Chairman of the Federal Energy Regulatory Commission, also support this amendment.

However, there is a powerful group of trade associations organizing to oppose this much-needed reform. The primary opponents include the Electric Power Supply Association, the International Swaps and Derivatives Association, the American Bankers Association, the American Bankers Association Securities Association, the Bond Market Association, the Financial Services Roundtable, the Futures Industry Association, the Securities Industry Association, and the U.S. Chamber of Commerce. Those who oppose regulation of the energy derivatives market say it shows no signs of needing oversight, that complying with the new reporting requirements—the same reporting requirements that the CFTC requires of the New York Mercantile Exchange and the Chicago Mercantile Exchange—would be too burdensome. The opposition also claims that this amendment is premature, arguing that there is no proof that over-the-counter energy derivatives help to precipitate Enron's collapse, despite expert analysis to the contrary.

**Industry Associations Opposing Senator Feinstein's Enron Reform**

**American Bankers Association:** Represents all categories of banking institutions.

**American Bankers Association Securities Association:** Represents banking organizations involved in the securities business.

**Bond Market Association:** Represents securities firms and banks that underwrite, trade and sell debt securities.

**Electric Power Supply Association:** Represents competitive power suppliers.

**Financial Services Roundtable:** Represents large integrated financial services companies.

**Futures Industry Association:** Represents futures commission merchants and other corporations interested in the futures market.

**International Swaps and Derivatives Association:** Represents 550 companies in the privately negotiated derivatives industry.

**Securities Industry Association:** Represents 700 securities firms.

**U.S. Chamber of Commerce:** Represents more than 3 million businesses and 830 business associations.

These trade associations have spent millions of dollars on lobbying and campaign contributions to Senate candidates over the last two election cycles. This enormous spending, while likely not securing specific votes, has bought these industry associations incredible access to key decision-makers in the Senate—decision-makers who will be voting this week on whether or not to re-regulate energy derivatives. As detailed in Table 1 *(page 4)*, the nine industry associations publicly opposing the Feinstein amendment have spent $46 million on lobbying in 2000 and the first half of 2001 alone. In addition, these industry associations have given more than a million dollars in PAC contributions to Senate candidates and contributed more than $1.7 million in soft money in the 1999-2000 and 2001-2002 election cycles.

Of course, these associations are comprised of numerous member companies—some of the largest in the country—that choose to affiliate with the industry associations because of shared political goals and ideals. Therefore, although these industry associations are representing the interests of the member companies before Congress, the larger member companies lobby independently and distribute campaign contributions above and beyond those of the industry associations. Dozens of companies belong to one or more of the industry associations formally opposing the Feinstein amendment. Bank of America, Bank One, Bear Stearns, Citigroup, Credit Suisse FirstBoston, Goldman Sachs, J.P. Morgan Chase, Lehman Brothers, Merrill Lynch and Wells Fargo, which each belong to at least three of the industry associations, spent enormous amounts of money on lobbying and campaign contributions in the last two election cycles as well, as shown in Table 2 (*page 4)*. Although these corporations have taken no known public position on the Feinstein amendment, they are exemplars of the political power and muscle of the member companies represented by the industry associations formally opposing Senator Feinstein's proposed re-regulation of energy derivatives.

## Conclusion

The Senate should resist industry pressure and take immediate action to protect investors, employees and pensioners from future Enron-like collapses by passing Senator Feinstein's amendment to the Senate energy bill. Far from subjecting energy traders to burdensome and unfair regulations, this amendment would require energy traders to comply with important reporting and transparency requirements similar to those currently followed by the New York Mercantile Exchange and the Chicago Mercantile Exchange and met by energy traders until only two years ago. At a time when we are wondering how Enron could keep so many analysts and accountants in the dark about their balance sheets, we need to re-shine the bright light of public scrutiny on these murky and complex energy derivative transactions.

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## Table 1: Lobbying Expenditures and Campaign Contributions to Senate Candidates, 1999-2000 and 2001-2002 Election Cycles: Trade Associations Opposing the Feinstein Amendment

| Group Name | Lobbying Expenditures (2000)◊ | Lobbying Expenditures (2001)° | PAC Contributions to Senate (2000 cycle) | PAC Contributions to Senate (2002 cycle)* | Soft Money Contributions (2000 cycle) | Soft Money Contributions (2002 cycle)* |
|---|---|---|---|---|---|---|
| ABA Securities Association | $340,000.00 | Not available | $0.00 | $0.00 | $0.00 | $0.00 |
| American Bankers Association | $3,770,800.00 | $1,769,596.00 | $319,250.00 | $202,500.00 | $37,200.00 | $20,450.00 |
| Bond Market Association | $2,910,900.00 | $1,514,850.00 | $139,032.00 | $52,361.00 | $587,875.00 | $224,000.00 |
| Electric Power Supply Assn | $169,000.00 | $150,000.00 | $5,500.00 | $5,478.00 | $0.00 | $0.00 |
| Financial Services Roundtable | $450,000.00 | $1,020,000.00 | $50,000.00 | $36,580.00 | $0.00 | $15,647.00 |
| Futures Industry Association | $145,000.00 | $20,000.00 | $8,150.00 | $1,000.00 | $0.00 | $0.00 |
| International Swaps and Derivatives Association | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Securities Industry Assn | $6,564,586.00 | $3,040,000.00 | $52,999.00 | $23,736.00 | $418,200.00 | $208,950.00 |
| U.S. Chamber of Commerce | $17,410,660.00 | $6,780,000.00 | $90,000.00 | $19,500.00 | $172,550.00 | $46,650.00 |
| | **$31,760,946.00** | **$14,294,446.00** | **$664,931.00** | **$341,155.00** | **$1,215,825.00** | **$515,697.00** |

## Table 2: Lobbying Expenditures and Campaign Contributions to Senate Candidates, 1999-2000 and 2001-2002 Election Cycles: Ten Corporations Belonging to At Least Three Industry Associations Opposing the Feinstein Amendment

| Group Name | Lobbying Expenditures (2000)◊ | Lobbying Expenditures (2001)° | PAC Contributions to Senate (2000 cycle) | PAC Contributions to Senate (2002 cycle)* | Soft Money Contributions (2000 cycle) | Soft Money Contributions (2002 cycle)* |
|---|---|---|---|---|---|---|
| Bank of America | $1,567,331.00 | $732,916.00 | $184,040.00 | $89,050.00 | $3,147,824.00 | $36,557.00 |
| Bank One | $240,000.00 | $0.00 | $219,800.00 | $69,000.00 | $138,500.00 | $5,000.00 |
| Bear Stearns | $440,000.00 | $300,000.00 | $49,000.00 | $9,500.00 | $357,000.00 | $19,000.00 |
| Citigroup | $4,120,000.00 | $2,080,000.00 | $184,500.00 | $80,000.00 | $1,511,014.00 | $550,480.00 |
| Credit Suisse FirstBoston | $0.00 | $1,296,860.00 | $96,357.00 | $19,000.00 | $1,185,450.00 | $79,790.00 |
| Goldman Sachs & Co. | $0.00 | $0.00 | $116,955.00 | $42,500.00 | $1,093,350.00 | $245,335.00 |
| J.P. Morgan Chase & Co. | $2,829,324.00 | $2,980,000.00 | $223,011.00 | $42,500.00 | $35,842.00 | $130,860.00 |
| Lehman Brothers | $660,000.00 | $320,000.00 | $86,750.00 | $21,090.00 | $638,650.00 | $107,550.00 |
| Merrill Lynch & Co. | $3,660,000.00 | $2,940,000.00 | $69,000.00 | $7,500.00 | $531,761.00 | $127,290.00 |
| Wells Fargo | $720,000.00 | $320,000.00 | $112,400.00 | $44,100.00 | $101,750.00 | $34,572.00 |
| | **$14,236,655.00** | **$10,969,776.00** | **$1,341,813.00** | **$424,240.00** | **$8,741,141.00** | **$1,336,434.00** |

*Source: Center for Responsive Politics, www.opensecrets.org. Downloaded March 10, 2002.*
** Information for 2001-2002 election cycle is through February 2002.*
*◊ Lobbying expenditures reflect each corporation's total lobbying budget, not lobbying specifically earmarked to oppose this amendment.*
*° All 2001 figures based on mid-year lobbying reports covering January 1, 2001 through June 30, 2001, except for the Futures Security Association, Merrill Lynch and Credit Suisse numbers, which represent lobbying expenditures for the full year. These corporations have reported their year-end activity, but the U.S. Senate Office of Public Records have not yet made these reports publicly available (http://sopr.senate.gov/). Lobbying expenditures reflect each corporation's total lobbying budget, not lobbying specifically earmarked to oppose this amendment.*