

**CADWALADER, WICKERSHAM & TAFT**

1333 New Hampshire Avenue, NW  
 Washington, DC 20036  
 (202) 862-2200  
 Fax number: (202) 862-2400

From: Ellen Levinson	No. of pages:	Date: September 10, 1999
----------------------	---------------	--------------------------

**FOR IMMEDIATE DELIVERY TO:**

1)	Name: Norman Carleton Department of the Treasury	Fax No.: 202-622-0974 Phn No.: 202-622-1855
2)	Name: Oliver Ireland Federal Reserve Board	Fax No.: 202-452-3101 Phn No.: 202-452-3625
cc)	Name: Jeff Keeler ENRON	Fax No.: 202-828-3372 Phn No.: 202-466-9157
cc)	Name: David Mitchell CWT - New York	Fax No.: 212-504-5641 Phn No.: 212-504-6285
cc)	Name: Lech Kalembka CWT - New York	Fax No.: 212-504-6666 Phn No.: 212-504-6918

Dear Messrs. Carleton and Ireland:

I have attached, for your information and review, the latest versions of the amendments proposed by Enron to Section 901 of S.625 (the Bankruptcy Reform Bill). These amendments are supported by ISDA. Enron has submitted these amendments to the Senate Judiciary Committee staff for consideration. We would like the opportunity to discuss these provisions with you at your earliest convenience.

Sincerely,  
  
 Ellen S. Levinson

This communication is confidential and intended only for the addressee. Any distribution or duplicating of this communication is strictly prohibited. If you received this telecopy in error, please call us immediately.

87683.001

FACSIMILE\_000110\_0418/95

01000000001450

**EXPLANATION OF AMENDMENTS TO S. 625  
TO UPDATE SWAPS DEFINITION AND TO CLARIFY NETTING RIGHTS FOR  
CERTAIN FINANCIAL AGREEMENTS**

***Section 901(a)(1) – Definition of “Swap Agreement”***

As reported by Committee, the definition of “swap agreement” in current law is updated by (i) adding to the existing list of swap products, types of transactions that have been introduced since the last time the definition was amended, and (ii) including a “catchall” phrase to cover the potential for development of new swap products. Since this is a rapidly evolving industry, the catchall phrase is intended to provide flexibility to avoid the need to amend the definition as the nature and uses of swap agreements matures.

As reported, the definition of swap agreement inadvertently did not cover some legitimate transactions, and this amendment remedies this problem. First, the list of swaps is amended to include “weather derivatives,” an important type of transaction that allows end-users, such as energy companies, agricultural producers and agribusinesses, to manage their weather-related business risks. Second, the “catchall” clause is revised to ensure that the new definition (a) is not limited to products that address “economic” risk, which could inadvertently narrow the current definition, and (b) is flexible enough to accommodate swaps that are not traded “regularly” because they are new or innovative developments. The phrase “entered into in the swap market” is changed to “entered into by swap participants” since swap transactions do not take place on federally-regulated markets; swaps are entered into by agreements between parties “over-the-counter.”

***Section 901(d) – Netting Rights in Bankruptcy***

Under current law, a safe harbor from the application of the automatic stay in bankruptcy proceedings is provided for several types of financial transactions. This safe harbor is intended to provide legal certainty to the enforceability of netting rights in the case of bankruptcy. This amendment rectifies an inconsistency between the safe harbor for swaps and the safe harbor for several other types of financial transactions which, if not addressed, could undermine legal certainty for commodities, securities and forward contracts and repurchase agreements.

For swap agreements, netting rights in connection with “any payment or transfer” arising in connection with the transactions are protected in current law. However, for commodity, securities and forward contracts and for repurchase agreements, under current law the protection is more limited -- it only applies to netting rights related to “margin payments” and “settlement payments.” This inconsistency in statutory language can create some confusion about the exercise of netting rights in bankruptcy. To remedy this problem, the amendment would apply the same protection for commodity, securities and forward contracts and repurchase agreements that is already provided for swap agreements.

**AMENDMENTS TO S. 625 TO UPDATE SWAPS DEFINITION AND TO CLARIFY  
NETTING RIGHTS FOR CERTAIN FINANCIAL AGREEMENTS**

Update to the Definition of Swap Agreement:

Section 901(a)(1) of S. 625 is amended –

- a) on page 239, line 8, by deleting “or” after “agreement.”;
- b) on page 239, line 11, by inserting “or (VIII) a weather swap, weather derivative, or weather option;” after “agreement.”;
- c) on page 239, line 16, by striking the words “regularly entered into in the swap market” and inserting “entered into by swap participants”;
- d) on page 240, line 1, by inserting “or other” after “economic”;

Clarifying Netting Rights for Certain Financial Agreements:

Section 901(d) of S. 625 is amended –

- a) on page 248, line 17, by inserting “(i)” after the comma;
- b) on page 248, line 19, by inserting before the semicolon, “(ii) by striking the words ‘a margin payment’ through ‘arising out of’ and inserting ‘any payment or transfer due from the debtor under or in connection with’, and (iii) by inserting ‘any payment due to the debtor from a commodity broker, forward contract merchant, stockbroker, financial institutions, or securities clearing agency under or in connection with commodity contracts, forward contracts or securities contracts or against’ after ‘contracts against’”;
- c) on page 248, line 20, by inserting “(i)” after the comma; and
- d) on page 248, line 22, by inserting before the semicolon “(ii) by striking the words ‘a margin payment’ through ‘arising out of’ and inserting ‘any payment or transfer due from the debtor under or in connection with’, and (iii) by inserting ‘any payment due

0100000001452

to the debtor from such repo participant under or in connection with repurchase agreements or against' after 'contracts against'.

\*\* TOTAL PAGE.004 \*\*

01000000001453