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MARKETS

Relationship Banking: Trial Shows Merrill Had Courted Enron

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HOUSTON -- **Merrill Lynch** executives often spend weeks if not months carefully scrutinizing investment deals before agreeing to invest the firm's money.

But it took Merrill less than 10 days in December 1999 to agree to plunk down \$7 million to buy an interest in power-producing barges off Nigeria's coast -- despite oft-stated misgivings by Merrill executives. The reason: to please a potentially lucrative client, Enron Corp.


The barge deal now is the subject of a continuing federal criminal trial here. The outlines of the case long have been known in the aftermath of Houston-based Enron's collapse in 2001. But the trial offers a detailed look at the inner workings of a Wall Street firm as it ingratiated itself with a corporate client in a bid to win more business.

Four former executives from Merrill Lynch and two from Enron are accused of helping to engineer the barge deal to boost the energy giant's year-end earnings fraudulently. Prosecutors say Merrill bought into the deal on the basis of a verbal guarantee from Enron that Merrill would be bought out within six months at a profit. That made the deal a loan, the government alleges, not a profit-making sale beneficial to Enron's bottom line.

According to testimony, that's how some at Merrill saw the deal, too. Without admitting wrongdoing, Merrill in 2003 paid \$80 million to settle regulatory charges related to Enron, including the barge deal. In a separate settlement with federal prosecutors, the firm said it "accepted responsibility" for its employees' conduct and instituted reforms. A spokesman for Merrill declined to comment for this article.

Enron scrambled in late 1999 to sell an interest in the barges to boost year-end earnings, but it couldn't find a buyer that would complete the deal by Dec. 31. So it reached out to Merrill bankers, including Robert Furst, who managed the firm's Enron relationship from Dallas and is one of the defendants in the trial. The deal was presented to a Merrill lawyer for approval. When that lawyer brought it to his boss, Kathy Zrike, he

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seemed unsure of what type of deal it was, vaguely describing it as akin to "an undocumented handshake loan," Ms. Zrike testified.



Robert Furst

Ms. Zrike said she was troubled by the timing, confused over whether it was a loan or an actual sale and concerned that the only thing her firm knew about the barges came from Enron. When she talked to James Brown, Merrill's head of structured finance and a defendant in the trial, she questioned why Merrill was being asked to get involved in such a transaction in the first place. They also fretted over the instability of Nigeria and other risks. Ms. Zrike said that after talking to Mr. Brown she decided the deal wasn't a handshake loan, but was still troubled by it.

She said she also questioned Mr. Furst, who emphasized that Merrill had an interest in cultivating a relationship with Enron, which wanted to use the sale to book a \$12 million pretax profit, adding a penny per share to earnings. Enron would continue trying to sell the interest to another buyer, he said, so Merrill's stepping in was a small accommodation for a client, she testified.

Around that time, Mr. Brown faxed a 25-page memo on the deal to Merrill credit analyst Tina Trinkle. Mr. Brown was "very negative on the deal and thought it had a lot of risk," Ms. Trinkle testified. Mr. Brown told her that Mr. Furst initiated the deal because he was Enron's "yes man" at Merrill, she testified.

At a conference call with other Merrill executives, Ms. Trinkle recalls somebody asking if Merrill could get a written guarantee that Enron would buy the interest back if it couldn't find another buyer in six months. The answer, she said: No, because that would prevent Enron from booking the transaction as a profit-making sale. Nevertheless, somebody said Enron officials "are giving us their strongest assurance" that Merrill would be bought out by June 30, 2000, she recalled.

Nobody on that call voiced opposition. She later told a colleague that "all the bankers cared about was the money."

On Dec. 22, senior Merrill executives at another meeting agreed that for it to be a real sale, Enron couldn't guarantee that the barge interest would be bought back, Ms. Zrike testified. She said she believed Merrill's money was at risk and that it would be difficult to enforce Enron's verbal assurance.

A memo prepared for that meeting said only that Enron would help find a third-party buyer, though another Merrill document said that Daniel Bayly -- who was head of investment banking and another defendant here -- "will have a conference call with senior management of Enron confirming this commitment to guaranty the ML takeout within six months."

At another meeting, Merrill executives debated whether the deal would be a true sale or a "sham" to help Enron manage its earnings, Ms. Zrike recalled. Mr. Furst argued that it was important to build a relationship with Enron, which he called a "platinum" client, ticking off a list of Enron deals Merrill had done, she testified. (In 1999, Enron paid Merrill \$40 million in investment-banking fees.)

Ms. Zrike said she was told that Enron had verbally agreed only to help find another buyer and that Enron's accountants and outside auditor were aware of that.

She was worried that the deal smacked of earnings manipulation, but she was assured that a penny-per-share boost wouldn't be significant. Based on that, she said she agreed to let it to go forward. As for Mr. Bayly, she said, "because of the relationship, he was willing to support it."

Before approving the deal, Mr. Bayly's boss asked him to contact Enron's chief financial officer, Andrew Fastow. Mr. Bayly's boss instructed him to tell Mr. Fastow that Merrill didn't typically make such investments but would do so this time to help Enron, Ms. Zrike said. On Dec. 23, Mr. Furst set up a conference call that included Mr. Bayly, Mr. Fastow and Daniel Boyle, then an Enron executive and another defendant in the trial. Two Enron executives who have pleaded guilty to other crimes testified that Mr. Fastow later told them that he had guaranteed Merrill that its stake would be bought out within six months.

Ms. Zrike wasn't included on that call. She testified she never knew of any verbal promise by Mr. Fastow and wouldn't have approved the deal if she had.

The defendants maintain that Enron promised only to help find a buyer. Mr. Boyle, the only person on the call who has testified, said on Thursday that Mr. Fastow told Merrill only that nobody would lose money on the deal. Confronted by an e-mail exchange between Mr. Boyle and an Enron executive that mentioned the guarantee, Mr. Boyle conceded that he learned of it later.

Mr. Fastow, who has pleaded guilty in a cooperation deal with prosecutors, hasn't been called to testify.

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