

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Court  
Southern District of Texas  
FILED

MAY 13 2003

Michael N. Milby, Clerk

C.H.

MARK NEWBY,

Plaintiff,

VS.

ENRON CORP., et al.,

Defendants.

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CIVIL ACTION NO. H-01-3624  
(Consolidated)

**DEFENDANT JOSEPH W. SUTTON'S REPLY  
IN SUPPORT OF HIS MOTION TO RECONSIDER HIS MOTION TO DISMISS**

Defendant Joseph W. Sutton ("Sutton") respectfully replies to Lead Plaintiff's Opposition to the Motion to Reconsider Sutton's Motion to Dismiss.

**I. Introduction**

1. The PSLRA absolutely requires Lead Plaintiff to particularize facts supporting its allegations that the Management Committee approved, controlled, and managed the transactions, partnerships, and SPEs at issue in this lawsuit. Lead Plaintiff has failed to do so. Despite this failure, the Court has denied Sutton's Motion to Dismiss. Lead Plaintiff's Management Committee allegations are false and are shown to be false by Lead Plaintiff's own evidence. Although the rules allow Lead Plaintiff to allege whatever it wants against whomever it wants, they also require that Lead Plaintiff withdraw allegations that it cannot support. The Court should require Lead Plaintiff either to particularize facts supporting its Management Committee allegations or to abandon them. This is a reasonable request, and it is the law.

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**II. Lead Plaintiff has yet to particularize *one fact* supporting its Management Committee allegations.**

2. Lead Plaintiff has yet to particularize *one fact* supporting its allegations that Enron's Management Committee, as a governing body, approved and controlled the transactions, partnerships, and SPEs at issue in this case.<sup>1</sup> Lead Plaintiff's Management Committee allegations are beyond its personal knowledge and are necessarily based "on information and belief" or "on investigation of counsel." The PSLRA therefore requires that Lead Plaintiff particularize the factual basis underlying its belief that those allegations are true. *See In re Sec. Litig. BMC Software, Inc.*, 183 F.Supp.2d 860, 885 n.33 (S.D. Tex. 2001). Lead Plaintiff has not done so.

3. Sutton and other defendants have challenged Lead Plaintiff's Management Committee allegations because, quite frankly, they are false. The Management Committee did not approve any transaction at issue in this lawsuit.<sup>2</sup> The Management Committee did not control or manage any partnership or SPE. The Management Committee did not waive Enron's Code of Conduct. As noted in Sutton's Motion for Reconsideration, the Management Committee had no such authority. Management Committee meetings were characterized by five-minute "update" presentations regarding macro-level events within Enron's many divisions. At no time did Sutton attend a Management Committee meeting where accounting, financing, or SEC disclosure issues were

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<sup>1</sup> In its April 24, 2003 Order denying the "remaining insider defendants" motions to dismiss, the Court references what it alleges to be Management Committee minutes incorporated into the record by Lead Plaintiff. *See* April 24 Order [DE 1347] at 18. These minutes are not Management Committee minutes; they are Executive Committee of the Board of Directors minutes. This is the same mistake that the Court made in the Order denying Sutton's Motion to Dismiss. As demonstrated in Sutton's Motion for Reconsideration, although the Management Committee was renamed the Executive Committee for a brief time, it was always a separate and independent body from the Executive Committee of the Board of Directors. *See* Sutton's Motion for Reconsideration at 4, n.2.

<sup>2</sup> These statements concern the Management Committee's activities while Sutton served on that committee. Although Sutton knows of no reason to assume that the Management Committee's authority and responsibilities changed after he left Enron, he has no knowledge regarding what the committee did or did not do after his termination.

substantively discussed, much less approved. This is why Sutton has respectfully taken issue with the Court's emphasis on Lead Plaintiff's Management Committee allegations in denying his Motion to Dismiss.

4. Lead Plaintiff correctly states that it is the "master of its complaint" and that Sutton's version of the facts should not be considered with regard to his Motion to Dismiss. Sutton does not deny this and offers the true facts only to emphasize to the Court the importance of requiring Lead Plaintiff to support its allegations, as required by the PSLRA. Lead Plaintiff may plead whatever it wants against whomever it wants. But Lead Plaintiff may not ignore the PSLRA or, more importantly, may not remain silent while the Court denies Sutton's Motion to Dismiss based on allegations which (Sutton suspects) Lead Plaintiff now knows are false.<sup>3</sup> If Lead Plaintiff has a good faith basis for its Management Committee allegations, it should (and must) particularize facts that demonstrate that basis. If, however, Lead Plaintiff's Management Committee allegations are mistaken, Federal Rule of Civil Procedure ("FRCP") 11 requires that Lead Plaintiff withdraw those allegations so the Court may consider Sutton's Motion to Dismiss based solely on allegations properly made. *See* FRCP 11. *See also* FRCP 11 advisory committee's note to the 1993 amendments ("[FRCP 11] emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable and by generally providing protection against sanctions if they withdraw or correct contentions after a potential violation is

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<sup>3</sup> Sutton does not suggest that Lead Plaintiff violated FRCP 11 when it filed the Complaint. Sutton suspects that Lead Plaintiff, like the Court, was initially confused by the existence of two committees at Enron that could properly be called the Executive Committee. As described in Sutton's Motion for Reconsideration, one of those committees was the officer committee on which Sutton actually served (*i.e.*, the Management Committee) and the other was the Board committee on which he did not serve (*i.e.*, the Executive Committee of the Board). Lead Plaintiff has particularized facts only regarding the Board committee, which the Court found to fall short of the PSLRA's pleading requirements.

called to their attention.”). There is no middle ground. There is no third option. FRCP 11 and the PSLRA combine to require Lead Plaintiff to either particularize facts that support its Management Committee allegations or withdraw those allegations if it cannot.

5. Lead Plaintiff’s obligation to support its Management Committee allegations is imperative in light of the weight placed on those allegations by the Court in denying Sutton’s Motion to Dismiss. *See* Sutton’s Motion to Reconsider at 4-5 (quoting the Order). The Court’s belief that Sutton sat on a committee of Enron officers that “again and again” approved and controlled the transactions, partnerships, and SPEs at issue in this lawsuit was clearly an important component to the Court’s analysis. *Id.* According to the Court, Enron’s alleged fraud was so massive that anyone who took part in the day-to-day management of Enron’s operations and also reviewed and approved the transactions at issue in this lawsuit must have known or was severely reckless in not knowing that Enron’s balance-sheet and SEC disclosures were in violation of the law.<sup>4</sup> *See* March 25 Order [DE 90] pp. 6-7. The Complaint barely mentions Sutton and describes no particular actions that he is supposed to have taken. Lead Plaintiff’s conclusory (and false) Management Committee

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<sup>4</sup> The Court reiterated this conclusion in its April 22 Order when it said that the Complaint’s details of the alleged “Ponzi” scheme combined with its assertions that the Management Committee controlled Enron’s day-to-day operations and that “all significant business decisions were presented to the Management Committee for the members’ approval” caused the Court to find that Lead Plaintiff has stated a claim against those defendants who had served on the Management Committee for years. *See* April 22 Order at 7-8. More specifically, the Court found the “recurrence, frequency, scope, and timing” of these actions in support of the scheme to be the most compelling evidence of scienter. *Id.* Sutton respectfully submits that the Complaint does not detail the Management Committee’s actions in the manner described by the Court. Regardless, the Management Committee described in the Court’s orders is nothing like the Management Committee on which Sutton served. The Management Committee on which Sutton served was a relatively powerless, benign committee that took *none* of the actions attributed to it by the Court. It did not approve all significant business decisions. Although Management Committee members were involved in the day-to-day management of Enron, they did not manage Enron collectively. Each committee member had very specific responsibilities and authority within his or her part of the company. That authority and those responsibilities did not flow from their membership on the Management Committee. Sutton’s responsibilities never included establishing or managing the partnerships or SPEs described in the Complaint. To the extent that Sutton is to be held responsible for the actions of others on the committee that were involved with those partnerships and SPEs, he respectfully requests that Lead Plaintiff plead some basis demonstrating why he should be held so responsible. Lead Plaintiff has not done so..

allegations are therefore Sutton's only link to the Court's analysis. Sutton respectfully requests that the Court require Lead Plaintiff to particularize facts supporting those allegations, as required by the PSLRA, before considering them with regard to his Motion to Dismiss.

**III. Lead Plaintiff's own evidence demonstrates that its Management Committee allegations are false.**

6. Lead Plaintiff has incorporated evidence into the record that demonstrates that its Management Committee allegations are false. First, Lead Plaintiff has incorporated the minutes of the Finance Committee of the Board of Directors' May 1, 2000, meeting at which that committee approved Enron's Transaction Approval Process. See Appendix in Support of Plaintiffs' Oppositions to Motions to Dismiss, Exhibit 26, p. 3-4. An exhibit to those minutes demonstrates the process by which all transactions were approved at Enron.<sup>5</sup> See Transaction Approval Process (attached hereto as Exhibit "A" and incorporated herein by reference). The exhibit shows that the Management Committee was not a part of Enron's transaction approval process. *Id.* The Management

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<sup>5</sup> Lead Plaintiff previously submitted the Minutes from the Meeting of the Finance Committee of the Board of Directors of Enron Corp. to the Court as exhibit number 26 in its Appendix in Support of Plaintiffs' Oppositions to Motions to Dismiss. Sutton may, on a motion to dismiss, refer to documents necessarily relied on by Plaintiffs for their claims, including portions of those documents not attached to the Complaint. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000) ("We note approvingly . . . "[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim.") (quoting *Venture Assoc. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)). See also, *In re MCI Worldcom, Inc. Sec. Lit.*, 2002 WL 507, 533 n.1 (S.D. Miss. March 29, 2002) (quoting *Cortec Indus., Inc. v. Sum Holdings LP*, 949 F.2d 42, 47 (2d Cir. 1991)) (addressing present plaintiffs' counsel's failure to attach the prospectus to that complaint and finding "[w]hen a plaintiff chooses not to attach to the complaint or incorporate by reference a prospectus on which it solely relies and which is integral to the complaint, the defendant may produce the prospectus when attacking the complaint for its failure to state a claim, because plaintiff should not so easily be allowed to escape the consequences of its own failure.") *In re N2K Inc. Secs. Lit.*, 82 F. Supp. 2d 204, 207 (S.D.N.Y. 2000) ("On a motion to dismiss a complaint brought under the securities laws, the Court may properly consider documents, such as the prospectus at issue, which are incorporated into the complaint by reference."); *Recupito v. Prudential Secs. Inc.*, 112 F. Supp. 2d 449, (D. Md. 2000) ("Thus it is appropriate for the court to consider the contents of the registration statement, including the Prospectus, and other documents referenced and relied upon by Plaintiff without converting the motion to dismiss into a motion for summary judgment.").

Committee, as a governing body, lacked authority to approve any transaction, even those involving relatively insignificant amounts of money. Lead Plaintiff's allegation that the Management Committee had such authority is demonstrably false.

7. Lead Plaintiff has also incorporated the Powers Report into the record. *See* Lead Plaintiff's Submission of the Powers Report, filed May 7, 2003. The Powers Report is replete with references to and analysis of the manner by which the transactions at issue in this lawsuit received approval within Enron. *See* Powers Report at pp. 9, 22-23, 46, 107, 111-13, 148-49. Not once does the Powers Report allege that such approval flowed from the Management Committee or that the Management Committee, as a governing body, orchestrated any of the events at the heart of Enron's collapse. In fact, not once does the Powers Report name Sutton (even peripherally) as a participant in those events. Lead Plaintiff's request that the Court accept its conclusory allegation that the Management Committee approved (or that Sutton participated in) the events described in the Powers Report (*e.g.*, the Chewco and LJM2 transactions, *etc.*) is belied by the Powers Report itself.

**IV. Lead Plaintiff has yet to particularize *one fact demonstrating that Sutton acted with scienter.***

8. Lead Plaintiff has not particularized one fact that infers that Sutton traded Enron stock with scienter. As shown above, Lead Plaintiff's Management Committee allegations are not only unsupported by particularized facts but are also demonstrably false. Nowhere does the Complaint even allege that Sutton was a regular attendee at Management Committee meetings (Sutton was away from Houston at least 622 of the 1,095 days that the Complaint puts him on the Management

Committee).<sup>6</sup> Lead Plaintiff's allegations regarding Sutton's brief tenure as Enron's Vice Chairman (a/k/a/ the "ejection seat") are similarly weak. *See* Complaint at 73 (stating only that Sutton served as Vice Chairman). Nowhere does the Complaint allege, even in conclusory terms, what the responsibilities of that position were. The only evidence of what Sutton actually did as Vice Chairman comes from the October 11-12, 1999, Board of Directors minutes that show that the Board called upon Sutton to report on his work regarding Enron's Human Rights Policy and Enron's Social and Environmental Responsibility program. *See* Appendix in Support of Plaintiffs' Oppositions to Motions to Dismiss, Exhibit 24, p. 20. These and the scant allegations regarding Sutton's compensation at Enron cannot, as a matter of law, support the claims brought against him in this lawsuit.

**V. Lead Plaintiff's arguments in opposition to other motions do not justify denying Sutton's Motion to Dismiss.**

9. In its Opposition to Sutton's Motion to Reconsider, Lead Plaintiff refused to address the Complaint's lack of facts particularized to Sutton. Lead Plaintiff instead referred the Court to its April 22 Order regarding other defendants' motions for reconsideration. That order noted several arguments that Lead Plaintiff presumably wishes to make against Sutton's Motion for

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<sup>6</sup> Sutton believes that the facts will show that from 1997 to 1999 he was away from Houston for at least 622 out of the 1,095 days comprising those years, usually negotiating or otherwise facilitating deals for Enron International outside of the United States. Although the Court may not consider this fact at this stage, Sutton makes this observation to emphasize the importance of requiring Lead Plaintiff to particularize facts supporting the claims asserted against him in this lawsuit. This Court previously found one defendant's absence from Enron's Houston offices to be relevant to the Court's 12(b)(6) analysis. *See* April 24 Order [DE 1347] at 18 ("The complaint does not allege that Hirko attended the meetings of the Management Committee in Houston[.]"). Sutton respectfully suggests that nothing in the Complaint suggests that he performed the majority of his duties in Houston or that he was a regular attendee at Management Committee meetings. Lead Plaintiff should (and must) particularize facts supporting such an allegation before the Court may accept it as true.

Reconsideration. Sutton respectfully suggests that none of those arguments militates towards denying his motion.

10. The first such argument is that the public policy objectives underlying the PSLRA are not implicated by this lawsuit because this is not a strike suit. As all would agree, one of the objectives of the PSLRA is to prevent strike suits. *See* April 22 Order at 5. Because this is not a strike suit, the argument goes, any obligation to particularize facts to individual defendants in this lawsuit is somehow relaxed. Sutton respectfully submits that this argument ignores Congress's full motivation for passing the PSLRA and does not excuse Lead Plaintiff's failure to particularize facts against Sutton. Congress intended the PSLRA to serve policy objectives in addition to the prevention of strike suits. Those objectives include providing defendants with fair notice of the claims brought against them and, most importantly, protecting defendants from "harm to their reputations and goodwill." *See* Sutton's Motion to Dismiss at 2. Lead Plaintiff's ability to characterize this lawsuit as something other than a strike suit does not suspend the PSLRA's heightened pleading requirements. To the contrary, the magnitude of the fraud alleged in the Complaint demands that Lead Plaintiff meet those requirements in full.

11. As both Lead Plaintiff and the Court have observed, the common perception is that Enron's demise is a debacle of the first order, unprecedented in United States history. Individual notoriety arising from such an event is guaranteed to cause harm to an individual's "reputation and goodwill," especially where, as here, that individual is alleged to have knowingly defrauded millions of investors. This is exactly why the PSLRA requires Lead Plaintiff to particularize facts strongly inferring Sutton's alleged culpability and linking him directly to the fraudulent acts specified in the

Complaint. In this way, Sutton is not only put on notice as to exactly what he is alleged to have done, but he is also protected from unsupported allegations that seek to associate him with substantial wrongdoing. Lead Plaintiff cannot deny that such allegations have enormous potential to diminish or destroy Sutton's reputation in the community.<sup>7</sup> Lead Plaintiff's failure to link Sutton directly to any of the events at issue and to support the conclusory group-pled allegations that it does make against him is not excused by the fact that this is not a strike suit. The seriousness of Lead Plaintiff's allegations does not obviate the need for the PSLRA's pleading requirements. If anything, it underscores their importance.

12. Another argument noted in the Court's April 22 Order that Lead Plaintiff presumably believes applies to Sutton's Motion for Reconsideration concerns the Complaint's allegations that Enron's alleged fraud was common knowledge among Enron's employees. *See* April 22 Order at 7. The implication of the argument is that if lower level employees knew of Enron's alleged fraud, those higher-up must have known as well. *Id.* This argument and its underlying allegations do not apply to Sutton. Nowhere does the Complaint link such "common knowledge" to any Enron division in which Sutton is alleged to have worked. The fact that several Enron traders or employees working on certain projects allegedly became aware of wrongdoing within their respective divisions does not mean that Sutton was similarly aware of that wrongdoing.<sup>8</sup> Additionally, nowhere does the Complaint allege that such knowledge was prevalent among Enron employees before October 2000, when Sutton left Enron. The strongest allegations regarding employee awareness of wrongdoing

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<sup>7</sup> Indeed, to the extent that Sutton has been mentioned in the media at all, it is through his status as a defendant in this lawsuit.

<sup>8</sup> *See, e.g.*, Complaint at 305 (quoting Enron traders).

(*e.g.*, the 2001 Sherron Watkins letter, the 2001 EES manager letter, the 2001 Wall Street Journal Blockbuster article, *etc.*) concern the time period after Sutton left Enron. *See* Complaint at 376-77; DE 1194 at 127 n.62. and p. 148 n.75. Indeed, the Watkins and EES manager letters demonstrate that those individuals did not believe that all officers higher-up in company knew what was going on below. To the extent that employee knowledge of wrongdoing is alleged at all, the evidence particularized to support this allegation demonstrates that such knowledge arose, if ever, after Sutton's termination and only within Enron divisions that the Complaint does not link to Sutton.

## **VI. Conclusion**

13. Lead Plaintiff's allegations that the Management Committee approved and controlled the transactions, partnerships, and SPEs at issue in this lawsuit are false. Lead Plaintiff has not particularized facts supporting those allegations, and Sutton suspects that it cannot. FRCP 11 and the PSLRA combine to require that Lead Plaintiff either particularize facts supporting its Management Committee allegations or withdraw those allegations. Sutton's Motion for Reconsideration should be granted.

Respectfully submitted,



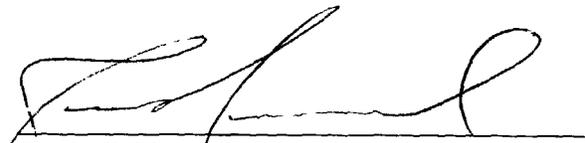
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served upon each counsel of record on this 12th day of May 2003, as shown on Exhibit "B" attached hereto.



Jason C. Norwood

# Enron Corp

Chief Risk Officer  
May 1, 2000

EXHIBIT

A

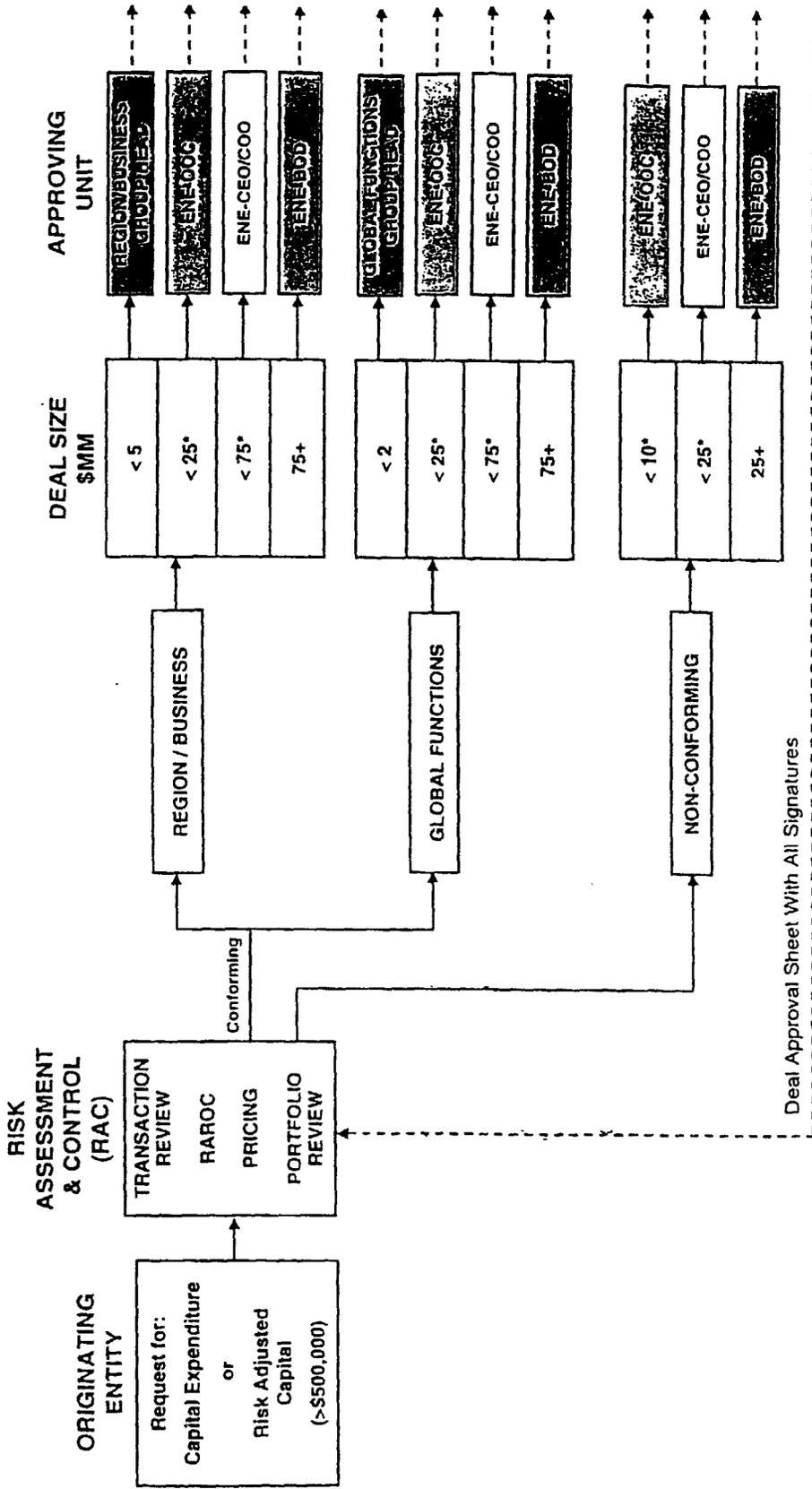
# Transaction Approval Process



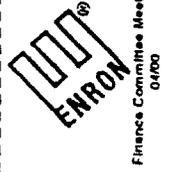
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# Enron Corp. Transaction Approval Process

Revised 5-2-00

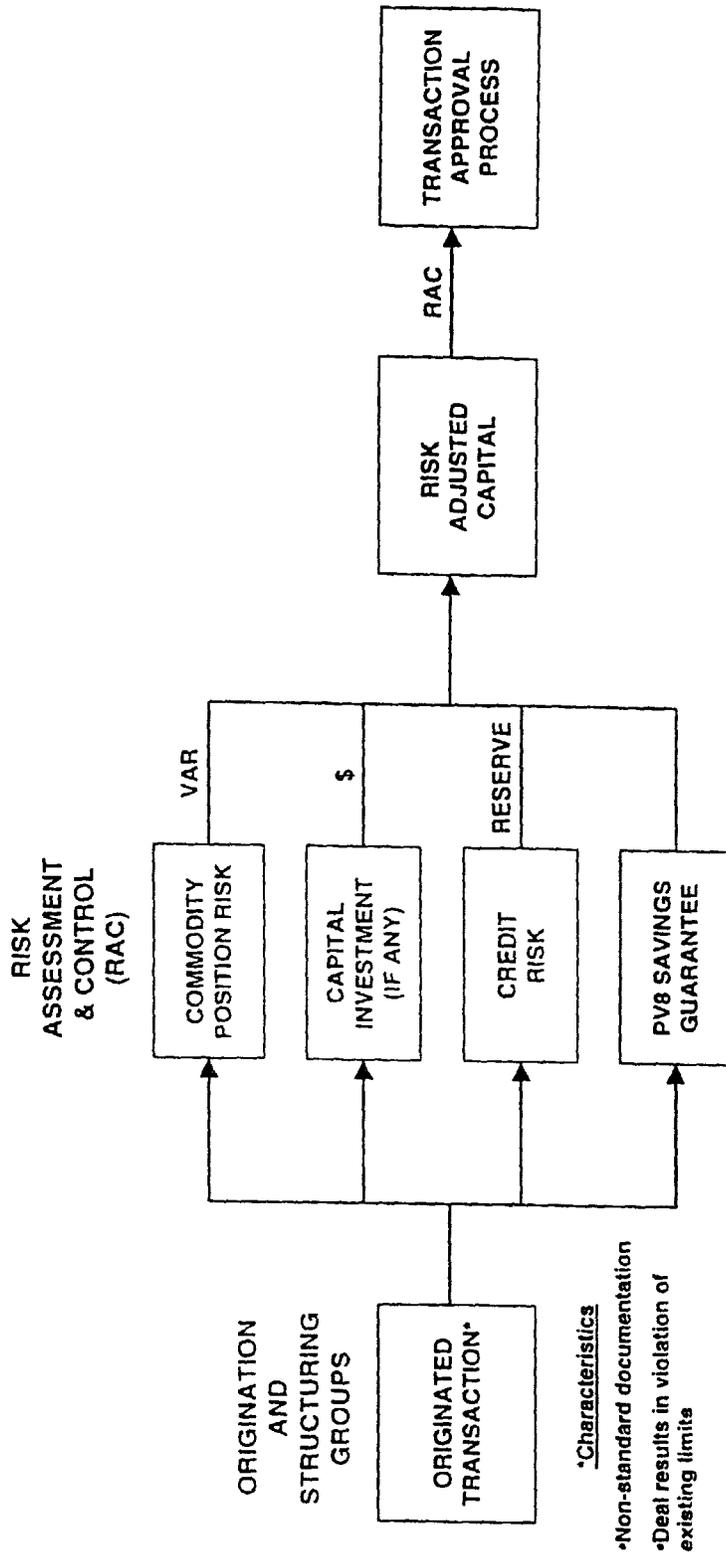


\* Transaction Deal Approval Sheets will be distributed to the ENE-BOD (Finance Committee) after approval by the ENE-EOC.



# Approval Process for Originated Contractual Transactions

Revised 5-2-00



- \*Characteristics
- Non-standard documentation
- Deal results in violation of existing limits



**Enron Corp.  
Transaction  
Approval Process**

**DEFINITIONS**

Revised 5-2-00

<b>REGION/BUSINESS GROUP HEADS</b>	<p>Jim Bannantine – South America Cliff Baxter – North America Sanjay Bhatnagar – India Diomedes Christodoulou – South America Dave Delaney – North America Andy Fastow – EGF Mark Frevert – Europe Kevin Hannon – EBS David Haug – Caribbean/Middle East Joe Hirko – EBS</p>	<p>Stan Horton – GPG Mike McConnell – Enron Net Works Jeff McMahon – Enron Net Works Rebecca McDonald – Asia/Africa Lou Pal – EES Ken Rice – EBS Jeff Sherrick – EGEP John Sherriff – Europe Greg Whalley – Enron Net Works Tom White – EES</p>
<b>GLOBAL FUNCTION GROUP HEADS</b>	<p>Kurt Huneke – Asset Operations Larry Izzo – EE&amp;CC</p>	
<b>ENE-OOC</b>	<p>Enron Corp. Office of Chairman Approval defined as Ken Lay, Jeff Skilling or Joe Sutton</p>	
<b>ENE-CEO or COO</b>	<p>Ken Lay or Jeff Skilling</p>	
<b>ENE-BOD</b>	<p>Enron Corp. Board of Directors Executive Committee between Board Meetings</p>	
<b>DEAL</b>	<p>Capital Expenditure Net to Enron Funding Vehicle exposure included in Enron exposure</p>	
<b>RAC</b>	<p>Risk Assessment and Control Group at Enron Chief Risk Officer responsible for RAC activities</p>	
<b>Capital Expenditure</b>	<p>All major corporate commitments by Enron and any of its subsidiaries Acquisitions/Divestitures (Divestitures exceeding \$500 MM require Board Approval) Disposal of Assets Providing a guarantee of obligations of unaffiliated third parties Providing debt, subordinated debt, equity or partnership capital A commodity or financial position that results in an exposure outside of Board Approved Limits</p>	
<b>Risk Adjusted Capital</b>	<p>The aggregation of exposure in a transaction that results from commodity positions, credit and guaranties; such exposure translated to an equivalent amount of capital</p>	
<b>Conforming</b>	<p>Routine non-budgeted Capital Expenditure within the general business lines of Enron Capital Expenditure made in an industry where Enron has established expertise Capital Expenditure made in a country where Enron has established a local presence and is currently conducting business RAC Group will determine if Conforming</p>	
<b>Non-Conforming</b>	<p>Capital Expenditure outside the general business lines of Enron Capital Expenditure in an industry where Enron has little or no expertise Capital Expenditure made in a country where Enron has no local expertise Capital Expenditure made in a country where the overall exposure to the country is excessive Capital Expenditure made to an entity or within an industry that would result in excessive exposure to that entity or industry RAC Group will determine if Non-Conforming EREC (Enron Renewable Energy Corp.) transactions are deemed non-conforming</p>	
<b>Merchant Portfolio Limit</b>	<p>The sum of all Merchant transactions less any syndicated amounts The numerical limit is set forth in the most recent Enron Risk Management and Trading Policy</p>	

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ImageNet 14276

Agenda Item \_\_\_  
TRANSACTION APPROVAL PROCESS  
(Suggested Form of Resolutions)

WHEREAS, the Board of Directors of the Company approved resolutions on October 12, 1998 adopting the Enron Corp. Transaction Approval Process (the "Transaction Approval Process") which provides for (i) a process for review and approval of Capital Expenditures (as defined in the revised policy attached to these minutes) and (ii) a process for prior transactions involving Capital Expenditures to be reviewed for performance and results; and

WHEREAS, the Board of Directors of the Company approved amendments to the Transaction Approval Process at meetings held on February 8, 1999, August 10, 1999 and February 7<sup>th</sup> and 8<sup>th</sup>, 2000;

WHEREAS, it would be in the best interest of the Company to amend the definitional provisions of the Transaction Approval Process in order to further reflect the reorganization of Enron Corp. into regional business units and global functions and to reflect a change in the definition of capital expenditures as it relate to divestitures;

NOW THEREFORE BE IT RESOLVED, that the Company revise the Transaction Approval Process to that attached to these minutes and as set forth in these resolutions:

RESOLVED FURTHER, that the revised Transaction Approval Process is adopted and approved, that a copy of the revised policy be attached to the minutes as Exhibit A, and that the persons, officers and Approving Units identified therein shall perform the responsibilities as specified; for the purposes of this policy a certification by the President, the Chief Financial Officer, the Treasurer, the Chief Risk Officer (or his or her designee), or any Senior Vice President to the effect that this policy has been complied with in connection with any transaction involving Capital Expenditures shall be conclusive evidence of compliance and may be relied upon by all persons interested in or participating in such transaction, including (without limitation) the officers signing transactional documents on behalf of the Company and attorneys issuing legal opinions with respect to the transaction;

RESOLVED FURTHER, that the revised Transaction Approval Process shall not apply to the approval process for guarantees *except* as to those guaranteeing the obligations of unaffiliated third parties. The approval process for all other guarantees shall continue as described in the Company's existing "Policy for Approval of Guarantees, Letters of Credit, Letters of Indemnity, and Other Support Arrangements", and shall be reviewed by the Finance Group and the Risk Assessment and Control Group;

RESOLVED FURTHER, that the Chairman of the Board and Chief Executive Officer, the President and Chief Operating Officer, the Vice Chairman, the Executive Vice President and Chief Risk Officer, the Executive Vice President and Chief Financial Officer, the Executive Vice President, Finance and Treasurer, any Vice President of the Company, or any other person authorized by the Board to act on behalf of the Company be, and each of them hereby is,



Finance Committee Meeting  
04/00

authorized and empowered to negotiate, enter into, execute, and deliver on behalf of the Company any agreements and documentation in connection with any transaction involving Capital Expenditures which has been approved in accordance with the revised Transaction Approval Process and as the officers executing such agreements shall approve, such approval to be conclusively evidenced by such execution; and

RESOLVED FURTHER, that all actions heretofore taken by the Chairman of the Board and Chief Executive Officer, the President and Chief Operating Officer, the Vice Chairman, the Executive Vice President and Chief Risk Officer, the Executive Vice President and Chief Financial Officer, the Executive Vice President, Finance and Treasurer or any Vice President, in the name and on behalf of the Company, related to or in connection with transactions of the type contemplated by the new review process attached to these minutes but which originated prior to these resolutions, including, without limitation, the execution and delivery of any instruments or other documents as any such officer shall have deemed necessary, proper, or advisable, are hereby adopted, ratified, confirmed, and approved in all respects.



Finance Committee Meeting  
04/01

The Service List

May be Viewed

in the

Office of the Clerk