United States Courts
Southern District of Texas
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Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(HOUSTON DIVISION)

In re ENRON CORPORATION SECURITIES LITIGATION	MDL-1446
This Document Relates To: MARK NEWBY, *et al.*, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, -v.- ENRON CORP., *et al.*, Defendants.	Civil Action No. H-01-3624 (Consolidated)

BANK DEFENDANTS' RESPONSE TO THE MOTION OF ENRON CORP. FOR RELIEF FROM AUGUST 2002 DISCOVERY ORDER

Defendants Citigroup Inc., Citibank N.A., Citigroup Global Markets Inc. (formerly known as Salomon Smith Barney Inc.), Salomon Brothers International Limited, J.P. Morgan Chase & Co., J.P. Morgan Securities Inc., JPMorgan Chase Bank, Credit Suisse First Boston LLC (formerly known as Credit Suisse First Boston Corporation), Credit Suisse First Boston (USA), Inc., Pershing LLC, Canadian Imperial Bank of Commerce, CIBC World Markets Corp. (formerly known as CIBC Oppenheimer Corp.), Bank of America Corporation, Banc of America Securities LLC, Merrill Lynch & Co., Inc., Merrill Lynch, Pierce Fenner & Smith Incorporated, Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Lehman Brothers Inc., and Lehman Brothers Holdings Inc. (collectively, "Bank Defendants") respectfully submit this Response to the

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"Unopposed Motion of Enron Corp. for Relief from August 2002 Discovery Order," filed September 30, 2003. While the movant, Enron Corporation ("Enron"), characterizes the motion as "unopposed," Enron did not confer with any of the Bank Defendants before filing the motion, although the motion—which asks the Court to relieve Enron of any further obligation to produce documents to the parties in this proceeding—would severely prejudice those defendants. The Bank Defendants oppose the motion for the following reasons:

ARGUMENT

By its motion, Enron asked to be relieved of its obligations under this Court's August 16, 2002 Order (the "Order"), which requires the company to produce to the document depository a copy of materials it has previously produced to governmental authorities as well as copies of transcripts of interviews and depositions related to those government inquiries. Because Enron is not now otherwise subject to discovery in this action, granting Enron's motion would, at best, greatly delay defendants' access to its documents.[1]

Enron's documents are at the heart of these proceedings, and the Bank Defendants have a strong interest in obtaining them at the earliest possible time. Granting Enron's motion could deprive the Bank Defendants of documents that are critical to establishing their defenses to plaintiffs' claims.

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[1] This Court's August 16 Order followed a separate order by Judge Gonzalez in the Enron bankruptcy lifting the automatic stay to the extent provided by this Court. In that Order, entered on May 22, 2002, Judge Gonzalez ordered Enron, "[c]onsistent with any Order" by this Court, to produce a copy of all documents produced to governmental authorities and transcripts of interviews or depositions taken by the governmental authorities or in connection with the Special Investigative Committee of the Enron Board.

Moreover, any further delay in producing Enron's documents to the depository will materially hamper the parties' ability to complete discovery and prepare for trial within the time frame contemplated by the Court's scheduling order of July 11, 2003. Enron's motion, which demonstrates the enormous volume of documents in Enron's possession that are subject to the Court's August 16 Order, only underscores the need for these documents to be made available at the earliest possible date, so that the parties have a reasonable opportunity to review and digest them before the commencement of depositions. Cutting off production now can only delay the review of Enron's documents and make a Herculean task even more difficult.

In support of its motion, Enron claims that continued compliance with the Order will impose undue costs on it, which Enron contends would be in excess of $100 million. Enron provides little support for this contention, other than a conclusory statement that the production will cost $0.15 per page. In view of the fact that the bulk of Enron's production appears to be in electronic form (including the only specific item mentioned in Enron's motion, "8 terabytes" of information from Enron's "trading databases," White Aff. ¶ 7), Enron's estimate appears to be very significantly overstated. Enron does not contend that it has incurred $100 million in costs in producing these documents in the first instance to the government, and the cost of making an additional set of the documents would obviously be substantially less than the cost of the initial production.

The Bank Defendants do not wish to impose unnecessary costs on the Enron bankruptcy estate, and believe that it may be possible to reduce substantially the burden on Enron of complying with the Court's Order. Thus, for example, it may well be

that the "8 terabytes" of information from trading databases that Enron has produced to the Federal Energy Regulatory Commission may prove unnecessary to this case. Other categories of Enron documents may likewise be of limited relevance, or the parties may be able to agree that the cost of producing them is excessive in relation to their likely utility. Finally, the parties may be able to agree on less costly means of providing access to some of Enron's documents.

The Bank Defendants have not, however, had an opportunity to discuss these issues with Enron's counsel or with plaintiffs, and Enron's motion provides only skeletal information about the documents at issue. Indeed, the Bank Defendants are not able to determine from the information Enron has provided even such basic facts as what documents are subject to the Court's August 16 Order. While Exhibit A to Enron's motion purports to be a compilation of the government subpoenas and document demands served on Enron and the corresponding cover letters enclosing the requested documents, it is impossible to determine from that Exhibit what documents Enron has produced to the government or which of those documents have already been produced to the depository in this case. Moreover, the Bank Defendants were not aware until receiving Enron's motion of the problems Enron has identified or that Enron intended to make this motion.[2] Nor were the Bank Defendants aware that Enron had sought and received plaintiffs' purported "instruct[ion]" in May 2003 that Enron cease producing documents to the depository (and, in any event, such a unilateral "instruct[ion]" would not relieve Enron of its obligations under the Order). (Motion at 5.) Thus, the Bank

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[2] Enron's "Certificate of Conference," appended to its motion, reflects that Enron's counsel conferred only with plaintiffs before filing the motion.

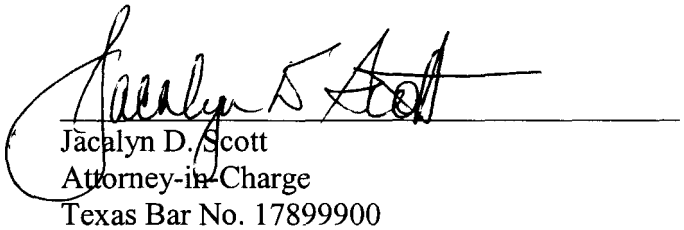
Defendants are unable to determine whether and to what extent a narrowing of Enron's obligations under the August 16 Order may be appropriate.

In light of the foregoing, the Bank Defendants propose that the Court deny the present motion, but stay its August 16 Order for 30 days to give the Bank Defendants and all other interested parties an opportunity to negotiate a resolution (or at least a substantial narrowing) of the issues raised by Enron's motion. Following that negotiation, if necessary, Enron can make a renewed motion that addresses with specificity precisely which documents it wishes to withhold from discovery and why, and the affected parties can in turn address with specificity why they need the discovery in question. Additionally, to facilitate a resolution, the Bank Defendants propose that the Court direct Enron to provide an index of the materials subject to the August 16 Order with sufficient information to identify the source and subject matter of those materials as well as whether those materials have already been produced to the document depository.

CONCLUSION

For the foregoing reasons, the Bank Defendants respectfully submit that Enron's motion should be denied, propose that the Court stay its August 16 Order for 30 days to give the parties and Enron an opportunity to attempt to resolve the issues raised by the motion. The Bank Defendants further submit that, to facilitate such a resolution, the Court should direct Enron to provide additional information sufficient to enable them to determine the source and subject matter of the documents subject to the August 16 Order and to identify which of those documents have not yet been produced to the depository.

Dated: New York, New York
October 10, 2003



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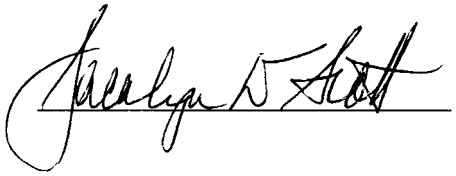
I hereby certify that a true and correct copy of the above and foregoing has been served upon all known counsel of record by electronic mail to the esl3624.com website on this 10th day of October, 2003.