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Michael N. Milby, Clerk of Court

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, Coordinated and
Related Cases)

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OF TEXAS
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Global Markets Ltd.

**DEFENDANTS CITIGROUP INC., CITIBANK, N.A., CITIGROUP GLOBAL
MARKETS INC. AND CITIGROUP GLOBAL MARKETS LTD.
MOTION FOR PROTECTIVE ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and the
Court's Orders of December 19, 2002 and September 18, 2003, defendants Citigroup
Inc., Citibank, N.A., Citigroup Global Markets Inc. (formerly Salomon Smith Barney
Inc.) and Citigroup Global Markets Ltd. (formerly known as Salomon Brothers

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International Limited) (collectively, "Citigroup") respectfully request that the Court enter a protective order designating as confidential the categories of documents described below.

INTRODUCTION

In response to plaintiffs' First Request for the Production of Documents (the "Request"), which seeks production by Citigroup of hundreds of thousands (if not millions) of documents relating to a vast array of subjects, Citigroup has produced over 1.4 million pages. While many of these documents contain confidential personal or commercial information, this motion seeks protection for only the most sensitive information, a tiny percentage of the documents produced to date.

The unrestricted disclosure of this highly confidential personal and business information and its use for purposes other than this litigation threatens injury to Citigroup's employees, customers and Citigroup itself. As set forth in the attached Declaration of Elaine H. Mandelbaum ("Mandelbaum Decl."), attached hereto as Exhibit A, in order to prevent such injury, the Court should afford confidential treatment to the documents listed in Exhibits B and C, which fall within two (2) narrowly-defined categories of documents described below.¹

1. Confidential Personal and Account Information. Pursuant to the Court's Order of December 19, 2002 (the "Order"), Citigroup seeks confidential

¹ In accordance with Citigroup's responses and objections to plaintiffs' Request, Citigroup has produced over 1.4 million pages of documents to plaintiffs. This motion seeks confidential treatment for documents falling within the two categories of documents containing the most sensitive information in that production. Because Citigroup's document production remains ongoing, it may identify or produce additional documents in these categories. Additionally, Citigroup reserves the right to seek

treatment for the private personal information, including personnel files and account documents, of its current and former employees and clients. These documents constitute only a tiny fraction of the 1.4 million pages already produced. Public disclosure of personal and account information is likely to cause precisely the kind of annoyance and embarrassment that Rule 26(c) was designed to prevent.

2. Confidential Credit and Risk Management Policies. Citigroup also has identified and seeks confidential treatment for a small number of extremely sensitive business documents: credit and other risk management policies and procedures. This narrowly-tailored category of documents constitutes a tiny fraction of the documents produced to date. To date, Citigroup has identified only two credit manuals, “The Risk Rating Policy for the Global Corporate and Investment Bank” and the “GCIB Credit Policies and Procedures” manual, and a small number of related documents for which it is seeking protection.² The public disclosure of such documents (or their unrestricted use by the other bank defendants) would reveal Citigroup’s proprietary business models and methods and place Citigroup at a serious competitive disadvantage, thereby causing unnecessary injury to its commercial interests. The commercial and investment banking industries are highly competitive. Financial institutions, such as Citigroup and the other bank defendants in this case, are in constant competition with one another for the same clients and the same business opportunities. Citigroup’s ability to compete successfully in this environment depends on its continued ability to provide innovative and

confidential treatment for other categories of documents in the event that it is compelled to produce any additional categories of documents that warrant such protection.

² Citigroup has produced multiple copies of these manuals, in whole and in part, and this constitutes the vast majority of pages Citigroup is seeking to keep confidential.

sophisticated financial services at competitive prices. For these reasons, disclosing Citigroup's proprietary credit and risk management methods and procedures would injure its competitiveness.

Affording protection to these categories of documents will not interfere with plaintiffs' or any other party's ability to prosecute or defend the claims at issue in this action. Nor will it meaningfully limit the public's access to or ability to understand the substance of these judicial proceedings. Indeed, documents that fall into these narrow categories make up only a tiny percentage of Citigroup's total production.

Furthermore, in producing documents in the other Enron-related cases that have proceeded to discovery, Citigroup has designated a much broader category of documents as confidential. The documents reflected on Exhibits B and C would have been designated highly confidential under the terms of the protective orders entered in those cases. *See, e.g.*, Order Governing the Production and Use of Confidential Material, *In re Enron Corp.*, Case No. 01-16034 (Bankr. S.D.N.Y. October 10, 2002), attached hereto as Exhibit D.

* * *

Accordingly, Citigroup respectfully requests that the Court enter a protective order that (1) designates as confidential documents reflecting credit and risk management policies as listed on the attached Exhibit B, and documents containing client and employee personal and account information, as listed on the attached Exhibit C; (2) prohibits the disclosure of such documents to nonparties or the public; and (3) prohibits the disclosure of such documents to parties, or their use by parties, except as

necessary to prosecute or defend this action. A proposed protective order is attached hereto as Exhibit E.

ARGUMENT

I. THE COURT HAS BROAD DISCRETION TO LIMIT THE DISCLOSURE OR USE OF CONFIDENTIAL INFORMATION ON A SHOWING OF GOOD CAUSE.

Federal Rule of Civil Procedure 26(c) provides that the Court, “for good cause shown ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” According to the Supreme Court, “Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984). Rule 26(c)(7) specifically provides that the Court may order “that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way.”

In order to demonstrate the good cause necessary to justify confidential treatment, a party must show that the documents in question have been maintained in confidence and that their disclosure would lead to a “specific prejudice or harm.” *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002). Once such a showing is made, the requesting party’s “presumption of free use dissipates, and the district court can exercise its sound discretion to restrict ... what use can be made of [materials] once obtained.” *Harris v. Amoco Production Co.*, 768 F.2d 669, 684 (5th Cir. 1985); *see also Phillips*, 307 F.3d at 1210 (noting that upon a showing of good cause, Rule 26(c) permits a court to override the presumption that the fruits of pre-trial discovery are public).

II. THE PUBLIC DISSEMINATION OR UNRESTRICTED USE OF CITIGROUP'S HIGHLY CONFIDENTIAL CREDIT AND OTHER RISK MANAGEMENT POLICIES AND PROCEDURES WOULD CAUSE IRREPARABLE HARM TO CITIGROUP'S BUSINESS INTERESTS.

By its terms, Rule 26(c) offers protection to a broad array of confidential commercial information. *See Phillips*, 307 F.3d at 1211; *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 890 (E.D. Penn. 1981) (noting that the scope of Rule 26(c)(7) “is broad enough to include a wide variety of business information”); *see also Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1979) (“[C]ourts have refused to permit their files to serve . . . as sources of business information that might harm a litigant’s competitive standing.”). The documents reflected on Exhibit B, which comprise a narrowly-defined category of confidential business information, certainly fall within the Rule’s scope.

Citigroup is seeking protection for the documents reflected on Exhibit B. Most of these documents are copies of “The Risk Rating Policy for the Global Corporate and Investment Bank” and the “GCIB Credit Policies and Procedures” manual, or parts thereof. The remainder — approximately 40 documents, which are individually identified and described on Exhibit B — are for the most part memoranda and e-mail messages discussing and distributing these two policies.

These documents are commercially sensitive. *See Mandelbaum Decl.* ¶¶ 6-7. These documents are central to the financial institution’s core commercial functions and set forth Citigroup’s proprietary business and management practices with respect to risk management. Specifically, such documents detail how Citigroup identifies, measures, approves and reports credit risk with respect to clients and specific credit facilities. These documents also describe the processes by which Citigroup ensures the

accuracy and consistency of its risk ratings across various business units. These policies drive Citigroup's lending decisions and management of credit risk at the transaction, client and portfolio level. *See id.*

Citigroup considers all of this information highly confidential. *See* Mandelbaum Decl. ¶ 6. These documents are not shared outside of Citigroup. *See* Mandelbaum Decl. ¶ 8.

The public disclosure of Citigroup's confidential credit and risk management policies to nonparties (or the unrestricted use of such information by co-defendant competitors) would cause serious injury to Citigroup's business interests and would threaten its ability to compete in the financial services markets. *See, e.g., Zenith Radio Corp.*, 529 F. Supp. at 890 ("Competitive disadvantage is a type of harm cognizable under Rule 26."). Unrestricted disclosure of the information concerning Citigroup's risk management policies and procedures—which information falls squarely within the categories of sensitive commercial information that courts regularly protect pursuant to Rule 26(c)(7)—would give Citigroup's competitors an unfair competitive advantage. Citigroup's competitors would have a roadmap to Citigroup's proprietary risk assessment and management techniques developed at its own expense and would be able to duplicate those risk management models and methods without cost. *See* Mandelbaum Decl. ¶ 9. Similarly, revealing the policies that underlie its lending decisions would give Citigroup's competitors a significant and unfair advantage in the competitive financial services market. *See id.*

The countervailing interest of plaintiffs in the wholesale public dissemination of such materials, and the public's interest in access to these categories of

materials, is far outweighed by the commercial injury disclosure would inflict.

Accordingly, as shown below and in the accompanying Declaration, good cause exists for the Court to grant a protective order to safeguard the confidentiality of Citigroup's credit and risk management policies and procedures, including those identified and produced to date and listed on the attached Exhibit B.

For similar reasons, courts routinely grant confidentiality protection to corporate plans, strategies, policies and procedures. *See, e.g., American Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 740-41 (Fed. Cir. 1987) (affirming district court's finding that marketing plans, sales data and pricing policies were confidential materials entitled to protection); *Star Scientific, Inc. v. Carter*, 204 F.R.D. 410, 414-15 (S.D. Ind. 2001) (holding that sales techniques, *inter alia*, can be protected as a trade secret and entering protective order); *United States v. Dentsply Int'l, Inc.*, 187 F.R.D. 152, 159 (D. Del. 1999) (finding that disclosure of corporate strategies, sales plans, and marketing plans, *inter alia*, would constitute a clearly defined and serious injury); *Sullivan Mktg., Inc. v. Valassis Communications, Inc.*, 1994 WL 177795, at *2 (S.D.N.Y. May 5, 1994) (protecting defendant's pricing and marketing plans, which would give "competitors an unwarranted advantage in the market"); *In re Neubauer*, 173 B.R. 505, 507-08 (D. Md. 1994) (affirming terms of protective order entered by bankruptcy court to safeguard confidentiality of "internal bank policies and procedures on loan decisions and management"); *Tavoulaareas v. Piro*, 93 F.R.D. 24, 29 (D.D.C. 1981) (granting protection to documents discussing corporate strategy, negotiations and long-range corporate planning).

III. CONFIDENTIAL PERSONAL INFORMATION ABOUT CITIGROUP EMPLOYEES AND CLIENTS SHOULD BE PROTECTED FROM PUBLIC DISCLOSURE.

In addition to the category of documents specified above, Citigroup seeks confidential treatment for documents containing personal information of current and former employees and clients. Plaintiffs' Request seeks financial account information for Citigroup's individual investor clients; it also seeks the personnel files of Citigroup's current and former employees, documents concerning these individuals' "total compensation" and "performance evaluations," as well as their personal files, including expense reports, calendars and address books. *See, e.g.*, Request No. 72. In its Order of March 27, 2003, this Court recognized the need to maintain the confidentiality of such information "in the spirit of General Order 2002-9."³

The documents that plaintiffs seek with respect to Citigroup's employees and clients, including those identified and produced to date and listed on Exhibit C, contain private and personal information. For example, employee personnel files may contain information about an employee's personal background, medical history, references, reviews, compensation, promotion decisions, social security numbers and personal account information. *See* Mandelbaum Decl. ¶¶ 10-11. Other documents from employees' personal files, including reimbursement requests and calendar entries, may include similar private information. Client account documents likewise contain social security numbers as well as the client's private financial information. *See id.*

³ General Order 2002-9 was subsequently amended by General Order 2003-4, which also provides for the protection of certain private information including Social Security and financial account numbers.

Citigroup maintains the confidentiality of both personal and account information, and its employees and clients expect it do so; accordingly, there is limited access to personal and account information within Citigroup, and such information is not publicly disclosed. *See* Mandelbaum Decl. ¶¶ 12.

At a minimum, public disclosure of such information is likely to cause Citigroup employees and clients the kind of annoyance and embarrassment that Rule 26(c) was intended to prevent. Such harm clearly outweighs any limited public interest in the disclosure of this category of documents, and courts routinely grant protective orders limiting access to and use of this kind of private and personal information. *See, e.g., Knoll v. American Telephone & Telegraph Co.*, 176 F.3d 359, 365-66 (6th Cir. 1999) (noting privacy interest in personnel files and affirming district court's protection of same); *Jepsen v. Florida Bd. of Regents*, 610 F.2d 1379, 1384 (5th Cir. 1980) (stating that trial court has duty to "limit the availability and use" of confidential personnel records); *Dubai Islamic Bank v. Citibank, N.A.*, 211 F. Supp. 2d 447 (S.D.N.Y. 2001) (affirming magistrate judge's protective order concerning bank account records and personnel files). Indeed, relevant statutes specifically protect this nonpublic personal information from disclosure. *See* Tex. Fin. Code § 59.006 (prohibiting financial institutions from disclosing personal information of customers without consent); 15 U.S.C. § 6802 (prohibiting financial institutions from disclosing nonpublic personal information without consent).

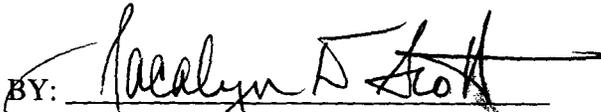
CONCLUSION

For the foregoing reasons, good cause exists for the Court to prohibit the public dissemination of and restrict the parties' use of Citigroup's proprietary and confidential commercial information and the private information of Citigroup's

employees and clients. Accordingly, Citigroup respectfully requests that the Court grant this Motion for Protective Order and enter the Proposed Protective Order attached hereto as Exhibit E.

Dated: November 3, 2003

Respectfully submitted

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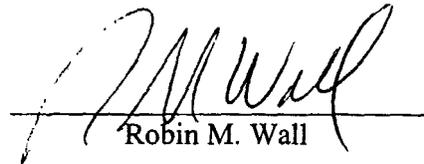
ROBIN M. WALL, an attorney duly admitted to practice law in the State
of New York, declares the following under the penalties of perjury:

1. I am an associate with the law firm of Paul, Weiss, Rifkind,
Wharton & Garrison LLP, attorneys for defendants Citigroup Inc., Citibank, N.A.,
Citigroup Global Markets Inc. and Citigroup Global Markets Ltd. (collectively,
"Citigroup") in this action.

2. On October 9, 10 and 30 and November 3, 2003, I spoke with John A. Lowther of Milberg, Weiss, Bershad, Hynes & Lerach LLP, counsel for lead plaintiffs in this action, about whether plaintiffs would agree to a stipulated protective order restricting the disclosure and use of the confidential business and personal information described in Citigroup's motion.

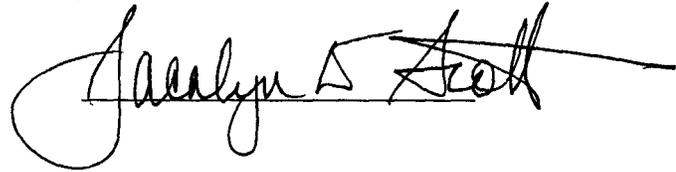
3. On November 3, 2003, Mr. Lowther stated that he could not consent to the confidential treatment of such documents at this time.

Dated: November 3, 2003
New York, New York


Robin M. Wall

CERTIFICATE OF SERVICE

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 es13624.com website or by facsimile or first class mail on this 3rd day of November, 2003.

A handwritten signature in black ink, appearing to read "Janelyn A. Scott". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

The Exhibit(s) May
Be Viewed in the
Office of the Clerk