

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

United States Courts
Southern District of Texas
ENTFRED

FEB - 4 2004

Michael N. Milby, Clerk of Court

IN RE ENRON CORPORATION
SECURITIES LITIGATION

THIS DOCUMENT RELATES TO:

All Cases

MARK NEWBY, ET AL.,

Plaintiffs,

VS.

ENRON CORPORATION, ET AL.,

Defendants.

CIVIL ACTION NO: H-01-3624

ORDER ON OFFICER DEFENDANTS' MOTION TO COMPEL DISCOVERY FROM DEUTSCHE
BANK ENTITIES

On November 18, 2003 attorneys for the "Officer Defendants," Cindy Olson, Lawrence G. Whalley, Mark A. Frevert, Mark E. Koenig, and Steven J. Kean, filed a motion to compel Deutsche Bank Entities¹ to respond to their requests for production (Instrument No. 1846).

The Deutsche Bank Entities filed an opposition on December 8, 2003, based upon their contention that discovery from them was stayed by virtue of the Private Securities Litigation Reform Act (PSLRA). Deutsche Bank argues that it had been dismissed from the *Newby* action on December 19, 2002, and when the motions to dismiss the Consolidated Complaint were decided and the PSLRA discovery stay lifted, on April 24, 2003, none of the Deutsche Bank Entities were parties to the *Newby* action. Thereafter, on May 14, 2003, the plaintiffs filed a First Amended Consolidated Complaint in *Newby*. That amended complaint renamed Deutsche Bank AG and added Deutsche Bank Trust Company Americas and Deutsche

¹The Deutsche Bank Entities consist of Deutsche Bank AG, Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company), and Deutsche Bank Securities Inc. (formerly known as Deutsche Banc Alex. Brown Inc.)

1967

Bank Securities Inc. The Deutsche Bank Entities argue that since the motion to dismiss the amended Consolidated Complaint has not yet been decided, they are shielded from discovery by the PSLRA.

Among the arguments made by the Officer Defendants to counter the Deutsche Bank Entities' position is that whether or not the PSLRA would shield them from discovery as defendants in the case, the discovery being sought is discovery similar to that being sought from non-parties. It would make no sense to allow an entity named as a defendant to be shielded from discovery to which a non-party must respond. The Reply of the Officer Defendants (Instrument No. 1939) points out that they

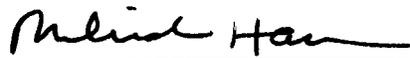
seek data relating to the volume and types of transactions in Enron stock that were handled by the Deutsche Bank Entities. The Officer Defendants' experts will use this data to analyze alleged damages and to determine how Enron stock traded in the market. The requests do not seek documents relating to the allegations of wrongdoing that Plaintiffs have asserted against the Deutsche Bank Entities.

Instrument No. 1939 at 1-2.

The Court agrees with the Officer Defendants that such discovery is not shielded by the PSLRA. Accordingly, it is hereby

ORDERED that the Deutsche Bank Entities shall produce documents responsive to the Officer Defendants' Requests for Production within 30 days of the date of the entry of this Order.

SIGNED at Houston, Texas this 3rd day of February, 2004.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE