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Southern District of Texas
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE ENRON CORPORATION SECURITIES LITIGATION	
This Document Relates To:	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Consolidated Civil Action Case No.: H-01-CV-3624
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. KENNETH L. LAY, et al., Defendants.	

REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO RECONSIDER THE COURT'S APRIL 5, 2004 ORDER RE: J.P. MORGAN DEFENDANTS

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James Norman, *Latest Enron Battle Pits Big Banks Versus Insurers*, PLATT'S OILGRAM NEWS, p. 1, Jan. 3, 2002 7

Defendant JPMorgan Chase Bank respectfully submits this Reply Brief in further support of its motion to reconsider the Court's April 5, 2004 Order (the "April 5 Order") denying its motion to dismiss Plaintiffs' Amended Complaint.

PRELIMINARY STATEMENT

Plaintiffs' Opposition does not dispute that Plaintiffs were on inquiry notice of the facts underlying their claim against JPMorgan Chase Bank more than one year before the Amended Complaint was deemed filed. Plaintiffs do not and cannot challenge that:

- The *Financial Times* is a widely disseminated publication of which they knew;
- The December 22, 2001 *Financial Times* article gave notice of the counterclaim filed in the case captioned *JPMorgan Chase Bank v. Liberty Mutual Insurance Co.*, No. 01 Civ. 11523 (S.D.N.Y.) (the "*JPMorgan Chase Bank* Action");[1]
- The *Financial Times* article and the counterclaim in the *JPMorgan Chase Bank* Action alleged the following *facts*:
    - The contracts underlying the Mahonia prepay transactions were "materially false";
    - The Mahonia prepay transactions were a "front" for loans to Enron in the "guise" of forward supply contracts; and
    - JPMorgan Chase Bank (and its predecessor The Chase Manhattan Bank) was the real party in interest respecting the Mahonia prepay transactions.
- The allegations made public through the press and the *JPMorgan Chase Bank* Action as of December 22, 2001 amounted to a claim that the Mahonia prepay transactions were fraudulent. Indeed, in drafting the Consolidated Complaint, Plaintiffs in some instances copied word for word the allegations made in the *JPMorgan Chase Bank* Action.

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[1] Note that Plaintiffs mistakenly refer in several instances to the *Financial Times* article as having been published on December 22, 2002. *See* Lead Plaintiff's Opposition to J.P. Morgan's Motion to Reconsider The Court's April 5, 2004 Order ("Opp.") at 7; Andrew Hill, *Insurer Claims Enron Contracts Were A Front*, FIN. TIMES, p. 10, Dec. 22, 2001.

Instead, Plaintiffs' Opposition devises a heightened and non-existent legal standard for inquiry notice. According to Plaintiffs, public disclosure of the facts underlying the claim is not enough to start the running of the statute of limitations. Plaintiffs insist that they must also have notice of their legal theory of recovery *and* the defendant cannot dispute the allegations before the clock will start. Plaintiffs advance this argument without citation to a single case in any jurisdiction that has even considered, much less adopted, such a standard.

Inquiry notice in this Circuit and others requires that Plaintiffs have reason to know of facts that would lead a reasonable person to conduct a further investigation, but no more than that. The statute of limitations begins to run when a plaintiff has notice of the facts underlying its claim, not the legal basis for that claim. Thus, Plaintiffs' repeated contention that there was notice of insurance fraud – but not securities fraud – is specious. Plaintiffs' illogic suggests that Enron and JPMorgan Chase Bank misled insurers into believing Enron accounted for the Mahonia prepay transactions as forward supply contracts while Enron publicly accounted for the transactions as loans. In fact, Plaintiffs' concession that it was on notice of alleged fraud by December 22, 2001 warrants dismissal of the claim against JPMorgan Chase Bank. Plaintiffs do not dispute that accusations publicized on December 22, 2001 set forth the alleged *fact* that the Mahonia prepay transactions were a fraud devised by JPMorgan Chase Bank by which loans to Enron were in the "guise" of forward supply contracts. Those accusations triggered the statute of limitations over one year before the Amended Complaint was deemed filed and thus Plaintiffs' claim against JPMorgan Chase Bank is time-barred.

ARGUMENT

THE STATUTE OF LIMITATIONS BEGINS TO RUN WHEN A PLAINTIFF HAS NOTICE OF THE FACTS UNDERLYING ITS CLAIM

This Court recognizes the well-settled doctrine of "inquiry notice" to determine when an applicable limitations period begins to run. *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, No. H-01-3624, MDL 1446, 2004 WL 405886, at *8 (S.D. Tex. Feb. 25, 2004). "Under this doctrine, the statute begins to run when the plaintiff has actual knowledge of the facts giving rise to his claims or has notice of facts that in the exercise of reasonable diligence should have led to such knowledge." *Id.* (emphasis omitted) (citing cases).

Emphasis is on the ***facts*** known to the plaintiff, not the legal theories available to it. "The requisite knowledge that a plaintiff must have to begin the running of the limitations period is merely that of the *facts* forming the *basis* of his cause of action, . . . not that of the existence of the cause of action." *Jensen v. Snellings*, 841 F.2d 600, 607 (5th Cir. 1988) (emphasis in original) (quoting *Vigman v. Community Nat'l Bank & Trust Co.*, 635 F.2d 455, 459 (5th Cir. 1981)); *Rahr v. Grant Thornton LLP*, 142 F. Supp. 2d 793, 796 (N.D. Tex. 2000) (same). *See also LC Capital Partners, LP v. Frontier Ins. Group, Inc.*, 318 F.3d 148, 154 (2d Cir. 2003) (the one-year limitations period begins to run after the plaintiff "obtains actual knowledge of the facts giving rise to the action or notice of the facts, which in the exercise of reasonable diligence, would have led to actual knowledge").

Furthermore, inquiry notice does not require notice of every single fact demonstrating indisputable proof of fraud. Rather, inquiry notice is triggered by "storm warnings" that alert a reasonable investor to the possibility of fraud and give rise to a duty to investigate potential claims. *See Jensen*, 841 F.2d at 610 n.6 ("What on the one hand is tantamount to actual discovery of fraud should not be confused with what on the other carries a

duty to investigate . . . . [F]acts in the sense of indisputable proof or any proof at all, are different from facts calculated to excite inquiry which impose a duty of reasonable diligence and which, if pursued, would disclose the fraud.") (internal quotations omitted). *See also Newman v. Warnaco Group, Inc.*, 335 F.3d 187, 193 (2d Cir. 2003) ("An investor does not have to have notice of the entire alleged fraud being perpetrated to be on inquiry notice."); *Franze v. Equitable Assurance*, 296 F.3d 1250, 1254 (11th Cir. 2002) ("Inquiry notice is triggered by evidence of the possibility of fraud, not full exposition of the scam itself."); *Kennedy v. Josephthal & Co.*, 814 F.2d 798, 802 (1st Cir. 1987) (same); *Sterlin v. Biomune Systems*, 154 F.3d 1191 (10th Cir. 1998) (concluding that a *Barron's* article generally critical of a company's claims regarding its products was sufficient to put an investor on inquiry notice of the possibility of fraudulent activity). "[T]he clock begins to tick when a plaintiff senses 'storm warnings,' not when he hears thunder and sees lightning." *Jensen v. Snellings*, 636 F.Supp. 1305, 1309 (E.D. La. 1986), *aff'd in part and rev'd in part on other grounds*, 841 F.2d 600 (5th Cir. 1988).[2]

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[2] This Court has observed that some courts view the limitations period as beginning to run, not on the date that "storm warnings" first appear, but on the later date on which an investor, alerted by storm warnings and thereafter exercising reasonable diligence, would have discovered the fraud. *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, 2004 WL 405886, at *9. Under either standard, the limitations period here began to run over one year before the Amended Complaint was deemed filed on January 14, 2003. As discussed below, and demonstrated on Schedule A, virtually all of Plaintiffs' allegations concerning the Mahonia prepay transactions are taken often *word for word* from the counterclaim in the *JPMorgan Chase Bank* Action, of which Plaintiffs undisputedly had notice on December 22, 2001. Therefore, the *JPMorgan Chase Bank* Action counterclaim "provided not merely the 'storm warnings,' but nearly all of the facts" underlying Plaintiffs' claim against JPMorgan Chase Bank. *Cf. Jensen*, 841 F.2d at 608.

PLAINTIFFS WERE ON NOTICE OF THE FACTS UNDERLYING THEIR CLAIMS AGAINST JPMORGAN CHASE BANK NO LATER THAN DECEMBER 22, 2001

Plaintiffs concede that public disclosures as of December 22, 2001 revealed that the Mahonia prepay transactions were allegedly fraudulent. Plaintiffs contend, however, that they did not have sufficient notice because the alleged fraud revealed was "insurance fraud, not securities fraud." Opp. at 3. Plaintiffs' objection is misplaced because what triggered the limitations period was the disclosure of the alleged facts, not Plaintiffs reaching the conclusion that those facts could form the basis of a claim under Section 10(b) against JPMorgan Chase Bank. *See Jensen*, 841 F.2d at 607 ("The requisite knowledge that a plaintiff must have to begin the running of the limitations period is merely that of the *facts* forming the *basis* of his cause of action, . . . not that of the existence of the cause of action.") (emphasis in original). And the alleged facts undisputedly made public as of December 22, 2001 by the *Financial Times* article and the *JPMorgan Chase Bank* Action counterclaim were that JPMorgan Chase Bank had participated in a fraud by providing loans to Enron in the "guise" of forward supply contracts.

Plaintiffs' own complaint defeats their argument. A review of the Consolidated Complaint, filed April 8, 2002, demonstrates that virtually all the allegations regarding the Mahonia prepay transactions that support Plaintiffs' claim for securities fraud are taken from the *JPMorgan Chase Bank* Action counterclaim and news articles from December 2001.[3] Indeed, some of the allegations in the Consolidated Complaint are copied *verbatim* from the *JPMorgan Chase Bank* Action counterclaim:

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[3] Plaintiffs' prepay allegations against J.P. Morgan Chase & Co. in the Consolidated Complaint are identical to their prepay allegations against JPMorgan Chase Bank in the Amended Complaint. *Compare* Consol. Compl. ¶¶ 558-64, 664-68 *with* Am. Compl. ¶¶ 558-64, 664-68.

Consol. Compl. ¶ 559: Enron "as sellers, entered into six separate agreements characterized as 'forward sales contracts' that purported to provide for the delivery of crude oil and natural gas over a 4-to-5 year period".	**Counterclaim ¶ 3** Enron "as sellers, entered into six (6) separate agreements denominated as 'forward sales contracts' purporting to provide for the delivery of crude oil and natural gas over a 4-5 year period".
Consol. Compl. ¶ 560: "Enron never intended to deliver the subject crude oil and natural gas as evidenced by the fact that it did not enter into contracts with suppliers to 'hedge' its obligations for delivery of the crude oil and natural gas required to be delivered under the terms of the forward sales contracts, which it would have done in the ordinary course of business if actual deliveries of crude oil and natural gas had been contemplated."	**Counterclaim ¶ 13**: "Enron did not actually intend to deliver the subject crude oil and natural gas as evidenced by the fact that it did not enter into contracts with suppliers to 'hedge' its obligations for delivery of the crude oil and natural gas required to be delivered under the terms of the Forward Supply Contracts, which it would have done in the ordinary course of business if actual deliveries of crude oil and natural gas had been contemplated."

A more extensive comparison of Plaintiffs' allegations in the Consolidated Complaint with the facts publicly disclosed as of December 22, 2001 is shown on the attached Schedule A. This chart demonstrates that nearly every allegation Plaintiffs ultimately advanced with respect to the Mahonia prepay transactions was disclosed by December 22, 2001.

Despite their wholesale reliance on the *JPMorgan Chase Bank* Action allegations to draft the *Newby* Consolidated Complaint, Plaintiffs argue that facts disclosed in December 2001 were not sufficient "storm warnings" because they did not show that "Enron's published financial results were being manipulated by the Mahonia prepays." Opp. at 3. Again, Plaintiffs are mistaken. The insurers in the *JPMorgan Chase Bank* Action alleged that the Mahonia prepay transactions were not to be fulfilled as "actual supply contracts," but instead were intended to "secure loans" to Enron. At a minimum, these allegations raised the "possibility" of fraud in connection with Enron's financial results. *See, e.g., Franze*, 296 F.3d at 1254 ("Inquiry notice is triggered by evidence of the possibility of fraud, not full exposition of the scam itself."). Indeed, on January 3, 2002, an industry journal reported the connection between the allegations of fraud

in the *JPMorgan Chase Bank* Action and the fraudulent accounting that is at the heart of *Newby*. *See* James Norman, *Latest Enron Battle Pits Big Banks Versus Insurers*, PLATT'S OILGRAM NEWS, p. 1, Jan. 3, 2002 ("[T]he surety companies say they were lied to by Enron and Chase, claiming the would-be commodity deals were really a sham to obscure $ 2-bil of unsecured loans. . . . If the insurer counterclaims prove valid, they raise a host of other questions about ***Enron's already-tarnished accounting methods,*** and the reporting and compliance activities of one of the country's most prestigious banks.") (emphasis added). Whether Plaintiffs actually read or should have read this article is immaterial. The article is significant because it demonstrates that the "storm warnings" before January 14 were sufficient to allow a person exercising reasonable diligence to determine that the claims in the *JPMorgan Chase Bank* Action raised questions about Enron's accounting that are the subject of the allegations here.

PLAINTIFFS' DUTY TO INVESTIGATE WAS NOT DISPELLED BY JPMORGAN CHASE BANK'S DENIALS OF WRONGDOING

That JPMorgan Chase Bank allegedly "minimized" the effect the December 2001 disclosures had on Enron's investors does not negate inquiry notice. Opp. at 4. Citing the Fifth Circuit's decision in *Jensen*, Plaintiffs contend that "concealment of relevant facts may be considered when determining inquiry notice." *Id.* (citing *Jensen*, 841 F.2d at 607). Plaintiffs conveniently ignore the complete holding of this case and its conclusion that the "better reasoned rule is that an act of concealment should not relieve the plaintiff of his duty to exercise reasonable diligence to discover the fraud." *Jensen*, 841 F.2d at 607. Indeed, "a plaintiff's duty to inquire is not dissipated merely because of a defendant's later refusal to acknowledge or own up to the alleged fraud." *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 289 F. Supp. 2d 416, 425 (S.D.N.Y. 2003); *Slavin v. Morgan Stanley & Co., Inc.*, 791 F. Supp. 327, 331 (D. Mass. 1992) ("[Defendant's] denial of wrongdoing should not have deterred this plaintiff

from pursuing its inquiry into the matter where the plaintiff was on inquiry notice that it had been defrauded."). Accordingly, Plaintiffs had a duty to investigate JPMorgan Chase Bank's alleged fraud notwithstanding that JPMorgan Chase Bank denied the fraud – and continues to do so to this day.

In any event, the statements Plaintiffs attribute to JPMorgan Chase Bank demonstrate that it concealed nothing. Opp. 4-6. In those reports, JPMorgan Chase Bank did not even address the counterclaim filed in the *JPMorgan Chase Bank* Action or the allegations of fraud, much less attempt to downplay them. Rather, JPMorgan Chase Bank discussed the existence of the surety bonds at issue in the *JPMorgan Chase Bank* Action and the refusal of insurers to pay the amounts due under those bonds.

STATUTE OF LIMITATIONS ISSUES ARE APPROPRIATE FOR RESOLUTION ON A MOTION TO DISMISS

While this Court has observed that inquiry notice may not always be subject to resolution on a motion to dismiss, it is equally clear that a motion to dismiss is properly granted when, as here, the facts underlying a plaintiff's claim were undisputedly known to the public over one year before the claim was filed. *See Dodds v. Cigna Sec., Inc.*, 12 F.3d 346, 352 n.3 (2d Cir. 1993) (inquiry notice is an appropriate subject for resolution as a matter of law at the pleading stage). In fact, the "overwhelming balance of case law" holds that inquiry notice is appropriately resolved on a motion to dismiss. *Rahr*, 142 F. Supp. 2d at 796 (noting that several courts have held that the objective test to determine diligence "not only allows but *mandates* dismissal of . . . a plaintiff's securities fraud claim when the pleadings disclose facts sufficient to have placed the plaintiff on inquiry notice of the alleged fraud prior to the one-year cutoff.") (emphasis in original) (internal quotations omitted).

CONCLUSION

For the foregoing reasons, and the reasons set forth in JPMorgan Chase Bank's opening brief, JPMorgan Chase Bank respectfully requests that this Court reconsider its April 5, 2004 Order and dismiss JPMorgan Chase Bank from the action.

Houston, Texas
Dated: May 3, 2004

Respectfully submitted,

/s/ Richard Warren Mithoff

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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 esl3624.com website on this 3rd day of May, 2004.

/s/ Richard Warren Mithoff
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SCHEDULE A

Consolidated Complaint[4]	News Article/*JPMorgan Chase Bank* Action
¶ 558: "The Enron Defendants also engaged in deceptive transactions with certain banking defendants to disguise loans to the Company as hedging or derivative transactions." **¶ 559**: "In reality, these were loans to Enron disguised as hedging contracts."	***JPMorgan Chase Bank* Counterclaim ¶ 23**: "... the Forward Sales Contracts ... were intended to provide a mechanism to obtain surety bonds to secure loans to be made to Enron in the guise of forward supply contracts."
¶ 559: Enron "as sellers, entered into six separate agreements characterized as "forward sales contracts" that purported to provide for the delivery of crude oil and natural gas over a 4-to-5 year period ..."	***JPMorgan Chase Bank* Counterclaim ¶ 3**: Enron "as sellers, entered into six (6) separate agreements denominated as 'forward sales contracts' purporting to provide for the delivery of crude oil and natural gas over a 4-5 year period ..."
¶ 560: "The forward sales contract was a sham. First, Enron never intended to deliver the subject crude oil and natural gas as evidenced by the fact that it did not enter into contracts with suppliers to 'hedge' its obligations for delivery of the crude oil and natural gas required to be delivered under the terms of the forward sales contracts, which it would have done in the ordinary course of business if actual deliveries of crude oil and natural gas had been contemplated."	***JPMorgan Chase Bank* Counterclaim ¶ 13**: "... the representations made by Mahonia in the Forward Sales Contracts were materially false, in that (a) Enron did not actually intend to deliver the subject crude oil and natural gas as evidenced by the fact that it did not enter into contracts with suppliers to 'hedge' its obligations for delivery of the crude oil and natural gas required to be delivered under the terms of the Forward Supply Contracts, which it would have done in the ordinary course of business if actual deliveries of crude oil and natural gas had been contemplated; ..."

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4 Plaintiffs' prepay allegations against J.P. Morgan Chase & Co. in the Consolidated Complaint are identical to their prepay allegations against JPMorgan Chase Bank in the Amended Complaint. *Compare* Consol. Compl. ¶¶ 558-64, 664-68 *with* Am. Compl. ¶¶ 558-64, 664-68.

Consolidated Complaint[4]	News Article/*JPMorgan Chase Bank* Action
¶ 560 (cont.)	**Chad Bray, *St. Paul Files Counterclaim To J.P. Morgan's Enron Suit*, DOW JONES NEWS SERVICE, Dec. 27, 2001:** "St. Paul Fire and Marine Insurance Co. … believes it and eight other insurers who bonded forward sales contracts for Enron … shouldn't be forced to make $1.1 billion in surety bond payments since those obligations were obtained under false pretenses." **Sheryl Jean, *The St. Paul Fights Back In Enron Case,* ST. PAUL PIONEER PRESS, Dec. 28, 2001:** "The St. Paul Cos. doesn't think it should have to pay any part of the $1.1 billion in payments related to oil and gas sales contracts it bonded for collapsed energy trader because the insurer alleges the agreements were a sham."
¶ 560: "Mahonia did not enter into contracts with third parties for the delivery of the oil and gas to be supplied by Enron under the terms of the forward sales contracts, which contracts were secured by surety bonds, reflecting that it never in fact intended to take delivery of crude oil and natural gas from Enron."	***JPMorgan Chase Bank* Counterclaim ¶ 13**: "… Mahonia did not enter into contracts with third parties for the delivery of the oil and gas to be supplied by Enron under the terms of the Forward Supply Contracts, which contracts were secured by the Surety Bonds, reflecting that it never in fact intended to take delivery of crude oil and natural gas from Enron. …"

Consolidated Complaint[4]	News Article/*JPMorgan Chase Bank* Action
¶ 560: "Mahonia was not listed as a firm transportation customer of any of the pipelines at which the natural gas deliveries were to have been made under the forward sales contracts relating to the delivery of the natural gas at the delivery points specified in such forward sales contracts, notwithstanding its express representation and warranty that it had the capacity and intended to take delivery of the natural gas to be delivered under such forward sales contracts and that it was acquiring such natural gas in the ordinary course of business."	***JPMorgan Chase Bank* Counterclaim ¶ 13**: "... Mahonia was not listed as a firm transportation customer of any of the pipelines at which the natural gas deliveries were to have been made under the Forward Sales Contracts relating to the delivery of natural gas and therefore did not have the capacity to accept delivery of the natural gas at the delivery points specified in such Forward Sales Contracts, notwithstanding its express representation and warranty that it had the capacity and intended to take delivery of the natural gas to be delivered under such Forward Sales Contracts and that it was acquiring such natural gas in the ordinary course of business."
¶ 561: "... both Mahonia and Stoneville – offshore corporations set up by the same company, Mourant du Feu & Jeune – have the same director Ian James, and the same shareholders, Juris Ltd. and Lively Ltd. ..."	**Andrew Hill, *JP Morgan Faces Extra Dollars 1bn Exposure Over Enron*, FIN. TIMES, p. 1, Dec. 20, 2001** "...Mahonia gives a Jersey address that is the office of Mourant du Feu & Jeune, a law firm specializing in setting up special purpose vehicles for companies. Ian James, a Mourant partner whose name appears as Mahonia's contact, did not return calls yesterday. The contracts describe Mahonia as 'the energy arm of The Chase Manhattan Bank' but it is understood that Mahonia's immediate owner is a charitable trust. Chubb's lawyers have asked JP Morgan to explain the links with Mahonia and to reveal the shareholders of two other Jersey companies, Juris Ltd and Lively Ltd, that they say are the immediate owners of the Mahonia companies."
¶ 562: "... Thus, since the market price of gas and/or the existence of gas was irrelevant to JP Morgan – the transaction represented a loan, rather than a pre-paid forward sales contract."	***JPMorgan Chase Bank* Counterclaim ¶ 23**: "... the Forward Sales Contracts ... were intended to provide a mechanism to obtain surety bonds to secure loans to be made to Enron in the guise of forward supply contracts."

Consolidated Complaint[4]	News Article/*JPMorgan Chase Bank* Action
¶ 563: "On 12/7/01, the insurers requested that Mahonia and JP Morgan provide information to verify that the surety bonds secured actual forward sales contracts for which there was actual deliveries of oil and natural gas. To date, JP Morgan has refused to provide any of the requested information."	***JPMorgan Chase Bank* Counterclaim ¶¶ 16-17:** "On December 7, 2001, simultaneously with the issuance of demands against the Surety Bonds by Mahonia's agent, Chase, St. Paul requested that Mahonia and Chase provide information to verify that the Surety Bonds secured actual forward supply contracts for which there were actual deliveries of oil and natural gas. As of the date of the filing of this Answer, Mahonia and Chase have failed to provide information sufficient to verify that the Forward Sale Contracts secured by the Surety Bonds are actual supply contracts for the future deliveries of crude oil and natural gas." ***JPMorgan Chase Bank* Counterclaim ¶ 23:** "... the Forward Sales Contracts ... were intended to provide a mechanism to obtain surety bonds to secure loans to be made to Enron in the guise of forward supply contracts."
¶ 564: "Enron overstated revenues and earnings before taxes by recording contracts worth approximately $2.2 billion of 'back to back' transactions between 12/97 and 12/00 by recording loans received from JP Morgan as forward sales contracts. As *The New York Times* noted on 2/19/02: 'The transaction records, many of which were held overseas and have never before been disclosed, indicate that many of the trades would not have involved any delivery of gas; experts said the pattern of trading suggested the purpose of the deals was to disguise bank loans.' ..."	**Andrew Hill, *Insurer Claims Enron Contracts Were A Front*, FIN. TIMES, p. 10, Dec. 22, 2001** "Oil and gas delivery contracts between Enron and an offshore company used by JP Morgan Chase were a front to obtain security for loans to the bankrupt energy trader, a US insurer alleged yesterday." **James Norman, *Latest Enron Battle Pits Big Banks Versus Insurers*, PLATT'S OILGRAM NEWS, p. 1, Jan. 3, 2002** "But the surety companies say there were lied to by Enron and Chase, claiming the would-be commodity deals were really a sham to obscure $ 2-bil of unsecured loans. ... As seeming proof of the sham nature of the deals, insurers

Consolidated Complaint[4]	News Article/*JPMorgan Chase Bank* Action
¶ 564 (cont.)	claim, no molecules have ever actually been exchanged between Enron and Chase under the sales. ... If the insurer counterclaims prove valid, they raise a host of other questions about Enron's already-tarnished accounting methods, and the reporting and compliance activities of one of the country's most prestigious banks."
¶ 664: ". . . JP Morgan and Enron engaged in fraudulent transactions utilizing an entity which JP Morgan secretly controlled, known as Mahonia Ltd., located in the Channel Islands between England and France. These transactions, which involved over $5 billion, were structured to appear as natural gas futures contracts, *i.e.*, commodity trades, between Enron and the Mahonia entity, which JP Morgan actively controlled. ... These transactions were, in reality, disguised loans from JP Morgan to Enron, a contrivance JP Morgan created to get cash to Enron to boost its apparent liquidity while concealing over $3.9 billion in debt that should have been reported on Enron's balance sheet."	**Andrew Hill, *JP Morgan Faces Extra Dollars 1bn Exposure Over Enron,* FIN. TIMES, p. 1, Dec. 20, 2001** "...Mahonia gives a Jersey address that is the office of Mourant du Feu & Jeune, a law firm specializing in setting up special purpose vehicles for companies. Ian James, a Mourant partner whose name appears as Mahonia's contact, did not return calls yesterday. The contracts describe Mahonia as 'the energy arm of The Chase Manhattan Bank' but it is understood that Mahonia's immediate owner is a charitable trust. Chubb's lawyers have asked JP Morgan to explain the links with Mahonia and to reveal the shareholders of two other Jersey companies, Juris Ltd and Lively Ltd, that they say are the immediate owners of the Mahonia companies." ***JPMorgan Chase Bank* Counterclaim ¶23**: "... the Forward Sales Contracts ... were intended to provide a mechanism to obtain surety bonds to secure loans to be made to Enron in the guise of forward supply contracts."
¶ 665: "JP Morgan knew these transactions were manipulative devices and contrivances and that, given the true financial condition of Enron, there was a risk Enron would default and JP Morgan would suffer a loss. Therefore, JP Morgan attempted to protect itself against	**See, e.g., *JPMorgan Chase Bank* Answer and Counterclaim ¶ 23**: "... the Forward Sales Contracts ... were intended to provide a mechanism to obtain surety bonds to secure loans to be made to Enron in the guise of forward supply contracts."

Consolidated Complaint[4]	News Article/*JPMorgan Chase Bank* Action
such loss by insuring the contracts. When Enron went bankrupt, JP Morgan attempted to collect on the insurance. However, the insurance carriers that issued surety bonds covering the 'commodities trades' between JP Morgan-controlled entities and Enron have refused to pay JP Morgan's losses, asserting the trades ***were fraudulent and used to conceal what were, in fact, loans from JP Morgan to Enron***…."	