United States Courts
Southern District of Texas
FILED
JUL 1 6 2004
Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES LITIGATION	§	MDL Docket No. 1446
This Document Relates To:	§	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	Civil Action No. H-01-3624 **(Consolidated)**
Plaintiffs,	§	CLASS ACTION
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	
vs.	§	
KENNETH L. LAY, et al.,	§	
Defendants.	§	

[Caption continued on next page]

MOTION FOR EXPEDITED CONSIDERATION OF BANK DEFENDANTS' MOTION TO CLARIFY THE MARCH 11, 2004 SCHEDULING ORDER, WITH RESPECT TO THIRD-PARTY COMPLAINTS AND CROSS CLAIMS IN ACTIONS NOT PROCEEDING UNDER THE CONSOLIDATED *NEWBY* AND *TITTLE* COMPLAINTS

227B

PAMELA M. TITTLE, *et al.*, Plaintiffs, vs. ENRON CORP., et al., Defendants.	§ § § § § § § § § § §	Civil Action No. H-01-3913
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ENRON CORP., Plaintiffs, vs. ANDREW S. FASTOW, MICHAEL J. KOPPER, BEN GLISAN, JR., RICHARD B. BUY, RICHARD A. CAUSEY, JEFFREY K. SKILLING, KENNETH L. LAY, JEFFREY McMAHON, JAMES V. DERRICK, JR., KRISTINA M. MORDAUNT, KATHY LYNN, ANNE YAEGER-PATEL, ARTHUR ANDERSEN, LLP, AND CARL FASTOW, AS ADMINISTRATOR OF THE FASTOW FAMILY FOUNDATION, Defendants.	§ §	Civil Action No. H-04-0091

[Caption continued on next page]

ELAINE L. CHAO, SECRETARY OF THE UNITED STATES DEPARTMENT OF LABOR,	§	
Plaintiff,	§	Civil Action No. H-03-2257 (Consolidated with H-01-3913)
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	

MOTION FOR EXPEDITED CONSIDERATION OF BANK DEFENDANTS' MOTION TO CLARIFY THE MARCH 11, 2004 SCHEDULING ORDER, WITH RESPECT TO THIRD-PARTY COMPLAINTS AND CROSS CLAIMS IN ACTIONS NOT PROCEEDING UNDER THE CONSOLIDATED *NEWBY* AND *TITTLE* COMPLAINTS

The undersigned defendants (collectively the "Bank Defendants")[1] respectfully submit this Motion for Expedited Consideration of their Motion To Clarify The March 11, 2004 Scheduling Order, With Respect To Third-Party Complaints And Cross Claims In Actions Not Proceeding Under The Consolidated *Newby* And *Tittle* Complaints (the latter motion is hereinafter referred to as the "Motion for Clarification"). The Motion for Clarification, filed simultaneously with the instant motion, seeks clarification as to the applicable date by which defendants must file third-party complaints and cross-claims in actions that are not proceeding under the consolidated *Newby* and *Tittle* complaints ("private actions"). Specifically, the Bank Defendants seek clarification and confirmation that such private actions are not subject to the

---

1 This motion is made on behalf of 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 International Limited), J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, J.P. Morgan Securities, Inc., Bank of America Corp., Banc of America Securities LLC, Bank of America, N.A., Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Credit Suisse First Boston LLC, Credit Suisse First Boston (USA), Inc., Pershing LLC, Merrill, Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Canadian Imperial Bank of Commerce, CIBC World Markets Corp., CIBC Inc., Toronto Dominion Bank, Toronto Dominion Holdings (USA), Inc., TD Securities, Inc., TD Securities (USA) Inc., Toronto Dominion (Texas) Inc., Royal Bank of Canada, RBC Dominion Securities Inc., RBC Dominion Securities Ltd., RBC Holdings (USA) Inc., RBC Dominion Securities Corp., Royal Bank Holding Inc., Royal Bank DS Holding, Inc., Royal Bank of Canada Europe Ltd., Deutsche Bank AG, Deutsche Bank Securities Inc., DB Alex. Brown LLC, Deutsche Bank Trust Company Americas, Lehman Brothers Holdings Inc., Lehman Brothers Inc., Lehman Brothers Commercial Paper Inc., The Royal Bank Of Scotland Group plc, The Royal Bank of Scotland plc, National Westminster Bank Plc, Greenwich Natwest Structured Finance, Inc., and Greenwich Natwest Ltd., Campsie Ltd. Certain of the bank defendants who join in this motion—namely, Royal Bank of Scotland, Royal Bank of Canada, and Toronto Dominion Bank, and their respective affiliates—are covered by the stay of discovery under the Private Securities Litigation Reform Act (15 U.S.C. Sec. 78u-4(b)(3)(B)), and join here without waiving any rights with respect to that stay.

August 2, 2004 deadline for adding parties and making third-party complaints or cross-claims that governs the *Newby* and *Tittle* cases, since there is a stay on filing of further pleadings in the private actions pending a decision concerning class certification, the defendants have not yet answered the complaints in many of the private actions, and it would be procedurally anomalous if the deadline for adding third parties and making cross claims preceded the filing of answers in such private actions.

The Bank Defendants have been in discussions with counsel for certain of the private action plaintiffs, in order to attempt a consensual resolution of any ambiguity in the schedule governing such cases, but have been unable to reach an agreement, necessitating the filing of the Motion for Clarification. In order to bring some certainty to the situation prior to August 2, 2004, the Bank Defendants respectfully request that their Motion for Clarification be considered and ruled upon by July 26, 2004, with opposing submissions due on July 21, 2004 and any responses to the opposing submissions due on July 22, 2004.

Dated: July 16, 2004

Respectfully submitted,

By: _____

Richard Warren Mithoff
Texas Bar No. 14228500
Jane L. Jordan
Texas Bar No. 11012700
MITHOFF & JACKS, L.L.P.
One Allen Center, Penthouse
500 Dallas Street, Suite 3450
Houston, Texas 77002
Telephone: (713) 654-1122
Facsimile: (713) 739-8085

OF COUNSEL:

Bruce D. Angiolillo
Thomas C. Rice
David J. Woll
Jonathan K. Youngwood
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Facsimile: (212) 455-2502

Charles A. Gall
Texas Bar No. 07281500
James W. Bowen
Texas Bar No. 02723305
JENKENS & GILCHRIST,
A Professional Corporation
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
Telephone: (214) 855-4500
Facsimile: (214) 855-4300

ATTORNEYS FOR J.P. MORGAN CHASE & CO., JPMORGAN CHASE BANK, J.P.MORGAN SECURITIES, INC.

* indicates signature by permission

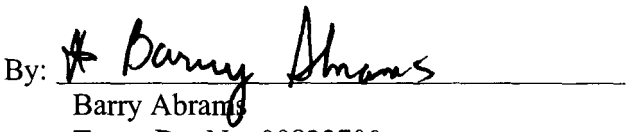
BY: Jacalyn Scott

Jacalyn D. Scott
Texas Bar No. 17899900
WILSHIRE SCOTT & DYER P.C.
3000 One Houston Center
1221 McKinney Street
Houston, Texas 77010
(713) 651-1221
(713) 651-0020 (Facsimile)

OF COUNSEL:

Brad S. Karp
Mark F. Pomerantz
Richard A. Rosen
Michael E. Gertzman
Claudia L. Hammerman
Jonathan H. Hurwitz
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000
(212) 757-3990 (Facsimile)

ATTORNEYS FOR DEFENDANTS CITIGROUP INC., CITIBANK INC., CITIBANK N.A., CITIGROUP GLOBAL MARKETS INC. (F/K/A SALOMON SMITH BARNEY INC.), CITIGROUP GLOBAL MARKETS LTD. (F/K/A SALOMON BROTHERS INTERNATIONAL LIMITED)

By: 

Barry Abrams
Texas Bar No. 00822700
ABRAMS SCOTT & BICKLEY, LLP
700 Louisiana, Suite 1800
Houston, Texas 77002
Telephone: (713) 228-6601
Facsimile: (713) 228-6605

OF COUNSEL:

David H. Braff
Michael T. Tomaino, Jr.
Jeffrey T. Scott
Steven J. Purcell
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4000
(212) 558-3588 (Facsimile)

ATTORNEYS FOR DEFENDANTS BARCLAYS PLC, BARCLAYS BANK PLC, BARCLAYS CAPITAL INC.

By: Charles King

Charles G. King
Texas Bar No. 11470000
KING & PENNINGTON LLP
1100 Louisiana Street
Suite 5055
Houston, Texas 77002
Telephone: (713) 225-8404
Facsimile: (713) 224-8488

OF COUNSEL:

Gregory A. Markel
Gregory Ballard
Ronit Setton
CADWALADER WICKERSHAM & TAFT LLP
100 Maiden Lane
New York, New York 10038
Telephone: (212) 504-6000
Facsimile: (212) 504-6666

ATTORNEYS FOR BANK OF AMERICA CORP., BANK OF AMERICA, N.A., BANC OF AMERICA SECURITIES LLC

By Mark Manela

Mark D. Manela
Texas Bar No. 12894500
S.D. Texas I.D. No. 01821
MAYER, BROWN ROWE & MAW LLP
700 Louisiana, Suite 3600
Houston, Texas 77002
(713) 547-9630
(713) 632-1848 (Facsimile)

OF COUNSEL:

Alan N. Salpeter
Michele Odorizzi
T. Mark McLaughlin
MAYER, BROWN ROWE & MAW LLP

190 South LaSalle Street
Chicago, Illinois 60603
(312) 782-0600
(312) 701-7711 (Facsimile)

Drew Neville, Jr.
B.J. Rothbaum
Charles E. Geister III
HARTZOG CONGER CASON & NEVILLE
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-7000
Facsimile: (405) 996-3403

ATTORNEYS FOR CANADIAN IMPERIAL BANK OF COMMERCE, CIBC INC., CIBC WORLD MARKETS CORP.

By: _____

Lawrence D. Finder
Texas Bar No. 07007200
Odean L. Volker
Texas Bar No. 20607715
HAYNES AND BOONE, LLP
1000 Louisiana Street, Suite 4300
Houston, Texas 77002-5012
Telephone: (713) 547-2000
Facsimile: (713) 547-2600

OF COUNSEL:

Richard W. Clary
Julie A. North
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

George W. Bramblett, Jr.
Texas Bar No. 02867000
Noel M.B. Hensley
Texas Bar No. 09491400
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

ATTORNEYS FOR CREDIT SUISSE FIRST BOSTON (USA) INC., CREDIT SUISSE FIRST BOSTON LLC (F/K/A CREDIT SUISSE FIRST BOSTON CORP.), PERSHING LLC (F/K/A DONALDSON, LUFKIN & JENRETTE SECURITIES CORPORATION)

By: _____

Joel M. Androphy
State Bar No. 01254700
Federal ID No. 1410
Thomas C. Graham
State Bar No. 24036666
Federal ID No. 35394
BERG & ANDROPHY
3704 Travis Street
Houston, Texas 77002-9550
(713) 529-5622
(713) 529-3785 - Facsimile

OF COUNSEL:

Lawrence Byrne
Owen C. Pell
Lance Croffoot-Suede
Joseph B. Schmit
WHITE & CASE LLP
1155 Avenue of the Americas
New York, New York 10036-2787
(212) 819-8200
(212) 354-8113 (Facsimile)

ATTORNEYS FOR DEFENDANT DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES INC., DB ALEX. BROWN LLC, DEUTSCHE BANK TRUST COMPANY AMERICAS

By: Claude Stuart

Claude L. Stuart, III
PHELPS DUNBAR, LLP
3040 Post Oak Boulevard, Suite 900
Houston, Texas 77056
Tel: 713-626-1386
Fax: 713-626-1388

OF COUNSEL:

Michael J. McNamara
Mark D. Kotwick
SEWARD & KISSEL LLP
One Battery Park Plaza
New York, New York 10004
(212) 574-1200
(212) 480-8421 (Facsimile)

ATTORNEYS FOR DEFENDANTS ROYAL BANK OF CANADA, RBC DOMINION SECURITIES INC., RBC DOMINION SECURITIES LTD., RBC HOLDINGS (USA) INC., RBC DOMINION SECURITIES CORP., ROYAL BANK HOLDING INC., ROYAL BANK DS HOLDING INC., ROYAL BANK OF CANADA EUROPE LTD.

By: Robert Sussman

Robert J. Sussman
Texas Bar No. 19523500
Federal Bar No. 2822
HINTON, SUSSMAN, BAILEY &
DAVIDSON, LLP
5300 Memorial Drive, Suite 1000
Houston, Texas 77007
Telephone: (713) 864-4477
Facsimile: (713) 864-8738

OF COUNSEL:

Robert Plotkin
MCGUIRE WOODS LLP
1050 Connecticut Ave., N.W., Suite 1200
Washington, D.C. 20036
Telephone: (202) 857-1750
Facsimile: (202) 857-1737

ATTORNEYS FOR DEFENDANTS THE TORONTO-DOMINION BANK, TORONTO-DOMINION HOLDINGS (U.S.A.), TD SECURITIES, INC., TD SECURITIES (USA) INC., TORONTO-DOMINION (TEXAS), INC.

By: _____

Taylor M. Hicks
Texas Bar No. 09585000
Southern District I.D. No. 3079
Stephen M. Loftin
Texas Bar No. 12489510
Southern District I.D. No. 12676
HICKS THOMAS & LILIENSTERN, LLP
700 Louisiana, Suite 1700
Houston, Texas 77002
Telephone: (713) 547-9100
Facsimile: (713) 547-9150

OF COUNSEL:

Herbert S. Washer
James D. Miller
Ignatius A. Grande
CLIFFORD CHANCE US LLP
31 West 52nd Street
New York, NY 10019
Telephone: (212) 878-8000
Facsimile: (212) 878-8375

Robert F. Serio
Marshall R. King
James L. Hallowell
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

COUNSEL FOR DEFENDANTS
MERRILL LYNCH & CO., INC.,
MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED

By: David Miller

David E. Miller
Laurie DeBrie Thanheiser
JONES DAY
717 Texas, Suite 3300
Houston, Texas 77002
Tel: 832-239-3939
Fax: 832-239-3600

OF COUNSEL:

John M. Newman, Jr.
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44144
Telephone: (216) 586-7207
Facsimile: (216) 579-0212

ATTORNEYS FOR THE ROYAL BANK OF SCOTLAND GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, NATIONAL WESTMINSTER BANK PLC, GREENWICH NATWEST STRUCTURED FINANCE, INC., GREENWICH NATWEST LTD., CAMPSIE LTD.

By: Hugh Whiting

Hugh R. Whiting
Texas Bar No. 21373500
S.D. Admission No. 30188
JONES DAY
717 Texas Avenue, Suite 3300
Houston, TX 77002-2712
Telephone: (832) 239-3939
Facsimile: (832) 239-3600

OF COUNSEL:

David L. Carden
Robert C. Micheletto
JONES DAY
222 E. 41 Street
New York, NY 10017-6702
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

ATTORNEYS FOR DEFENDANTS
LEHMAN BROTHERS HOLDINGS INC.,
LEHMAN BROTHERS INC., LEHMAN
BROTHERS COMMERCIAL
PAPER INC.

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 16th day of July, 2004.

Janie L. Jordan