

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

United States Courts  
Southern District of Texas  
FILED

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Michael N. Milby, Clerk

MARK NEWBY, *et al.*, Individually and §  
On Behalf Of All Others Similarly §  
Situating, §

Plaintiffs, §

v. §

ENRON CORP., *et al.*, §

Defendants. §

CIVIL ACTION NO. H-01-3624  
(Consolidated)

JOINT BRIEF OF OFFICER DEFENDANTS

Jacks C. Nickens  
State Bar No. 15013800  
1000 Louisiana Street, Suite 5360  
Houston, Texas 77002  
(713) 571-9191  
(713) 571-9652 (Fax)

ATTORNEY-IN-CHARGE FOR DEFENDANTS  
RICHARD B. BUY, RICHARD A. CAUSEY,  
MARK A. FREVERT, STANLEY C. HORTON,  
STEVEN J. KEAN, MARK E. KOENIG,  
MICHAEL S. McCONNELL, JEFFREY  
McMAHON, CINDY K. OLSON, KENNETH D.  
RICE, and LAWRENCE GREG WHALLEY

OF COUNSEL:

Paul D. Flack  
State Bar No. 00786930  
NICKENS, LAWLESS & FLACK, L.L.P.  
1000 Louisiana Street, Suite 5360  
Houston, Texas 77002  
(713) 571-9191  
(713) 571-9652 (Fax)

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**CIVIL ACTION NO. H-01-3624  
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**JOINT BRIEF OF OFFICER DEFENDANTS**

**Introduction**

Plaintiffs have sued for securities fraud nearly every Section 16 officer of Enron who served during the alleged Class Period (October 19, 1998 through November 27, 2001). The undersigned are filing Motions to Dismiss on behalf of eleven such Enron officers: Richard B. Buy, Richard A. Causey, Mark A. Frevert, Stanley C. Horton, Steven J. Kean, Mark E. Koenig, Michael S. McConnell, Jeffrey McMahon, Cindy K. Olson, Kenneth D. Rice, and Lawrence Greg Whalley (the “Officer Defendants”).<sup>1</sup>

Each of these Officer Defendants joins in this Brief (the “Joint Brief”) as well as in the Certain Defendants’ Joint Brief Relating to Enron Disclosures (the “Enron Disclosure Brief”). In addition, each of the Officer Defendants has filed an individual Motion to Dismiss that addresses the

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<sup>1</sup> Other law firms have filed separate individual motions to dismiss for Messrs. Derrick, Fastow, Lay, Pai, Skilling, Sutton, and Ms. Mark-Jusbache. In addition, this firm and another firm have jointly filed individual motions to dismiss for Hannon and Hirko. Finally, some of the Defendants and firms have jointly filed a Joint Brief Relating to Enron’s Disclosures. Typically that task would have been allotted to the company, but Enron’s bankruptcy precludes the typical approach.

remarkably few allegations from the *Newby* Consolidated Complaint that name or specifically address each of them. Despite repeated directives from the federal courts, including this Court, that under Rule 9(b) and the PSLRA, allegations of securities fraud must be particularized and specific to an individual defendant, Plaintiffs defiantly assert their case against the Officer Defendants in a collective, broad brush, conclusory fashion. Hence, with regard to the Officer Defendants, many of the defects of the *Newby* Complaint are common. For the convenience of the Court and, in particular, to reduce repetition, the Officer Defendants here discuss those shared pleading deficiencies and the applicable legal principles that are common to each of the Motions to Dismiss separately filed on behalf of each of the Officer Defendants.

**I. PLAINTIFFS FAIL TO ADHERE TO THE ELEMENTS AND PARTICULARIZED PLEADING REQUIREMENTS FOR SECURITIES FRAUD.**

To state a claim under section 10(b) of the Exchange Act and Rule 10b-5, the Plaintiffs must show: (a) a misstatement or an omission, (2) of material fact, (3) made in connection with the sale or purchase of a security, (4) with the intent to defraud (“scienter”), (5) on which the Plaintiffs relied, and (6) which proximately caused injury to the Plaintiffs. *See generally Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 177 (5<sup>th</sup> Cir. 1997), *cert. denied*, 522 U.S. 966 (1997).

This Court, in particular, is familiar with the pleading requirements applicable to a securities fraud claim, as established by Rule 9(b)<sup>2</sup> and the PSLRA.<sup>3</sup> Of paramount importance, the pleadings

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<sup>2</sup> Federal Rule of Procedure 9(b) states: “[I]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated *with particularity*.” (Emphasis added.)

<sup>3</sup> Plaintiffs must (a) “*specify each statement* alleged to have been misleading, [and] *the reason or reasons why the statement is misleading*” (the “Particularity” requirement); (b) “if an allegation regarding the statement or omission is made on information and belief, the complaint shall state *with particularity all facts* on which that belief is formed” (sometimes called the “Basis” requirement); and (c) “with respect to each act or omission alleged to violate this chapter, *state with*

must be specific and particularized to *each defendant*. See *Thornton v. Micrografx, Inc.*, 878 F. Supp. 931, 938 (N.D. Tex. 1995) (“Where multiple defendants must respond to allegations of fraud, the complaint should inform *each defendant* of the nature of his alleged participation in the fraud.”) (emphasis added); *Zishka v. American Pad & Paper Co.*, 2000 WL 1310529, at \*1 (N.D. Tex. Sept. 13, 2000) (“To comply with the PSLRA, Plaintiffs must plead with particularity their allegations against *each individual Defendant*” and must “delineate specifically what *each Defendant* knew”) (emphasis added); *Eizenga v. Stewart Enterprises*, 124 F. Supp.2d 967, 981 (E.D. La. 2000). Or, as this Court stated in *In re Securities Litigation BMC Software, Inc.*, 183 F. Supp.2d 860, 885 (S.D. Tex. 2001): “Plaintiffs must allege what actions *each Defendant* took in furtherance of the alleged scheme and specifically plead what *he* learned, when *he* learned it, and how Plaintiffs know what *he* learned” (emphasis added). As the Fifth Circuit has observed, the purpose of this heightened pleading standard in securities fraud suits is, among other things, “to provide [] defendants with fair notice of the plaintiffs’ claims.” *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1067 (5<sup>th</sup> Cir. 1993) (citing *Cosmas v. Hassett*, 886 F.2d 8, 11 (2d Cir. 1989)).

**A. The Plaintiffs’ Puzzle Pleading Approach Must Again Be Rejected.**

In contrast to the courts’ “who, what, when, how, and why” requirements, the Plaintiffs’ Consolidated Complaint in *Newby* reflects what the courts have denoted the “puzzle” approach. *Wenger v. Lumisys, Inc.*, 2 F. Supp. 2d 1231, 1244 (N.D. Cal. 1998) (“In the context of securities class action complaints, courts have repeatedly lamented plaintiffs’ counsels’ tendency to place the burden on the reader to sort out statements and match them with the corresponding adverse facts to

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*particularity* facts giving rise to a *strong inference* that *the Defendant* acted with the required state of mind” (the “Strong Inference” requirement). 15 U.S.C. § 78u-4(b)(2) (emphasis added).

solve the puzzle of interpreting plaintiffs' claims"). That approach, associated with the Lead Plaintiffs' law firm, is the antithesis of specificity. It makes use of prohibited group pleading and is organized in such a way to require the defendants and the courts to "puzzle" through the pleading to determine which statements the Plaintiffs attack as false and misleading. The hallmark of the puzzle approach is illustrated in paragraphs 109 to 390 of the *Newby* Complaint, where one finds a lengthy recitation of statements made by the Defendants, usually extracted from the public filings, analysts' reports, and newspaper accounts, followed by a list of "true but concealed facts" that are not tied to the statements.

Various courts confronted with the puzzle pleading approach have rejected it as not satisfying the legal requirements established by Rules 8 and 9(b), and the PSLRA. *See Wenger v. Lumisys, Inc.*, 2 F. Supp. 2d at 1244; *see also Williams v. WMX Technologies, Inc.*, 112 F.3d at 178 ("A complaint can be long-winded, even prolix, without pleading with particularity" and use "a garrulous style . . . to mask for an absence of detail."); *In re GlenFed Securities Litigation*, 42 F.3d 1541, 1554 (9<sup>th</sup> Cir. 1994) (These "puzzle-style" complaints are an "unwelcome and wholly unnecessary strain on defendants and the court system.")<sup>4</sup> The courts' frustration with this approach is palpable in these decisions. Plaintiffs nevertheless, in the biggest securities fraud case to date, have persisted in this approach, as if in hope that this case will vindicate and establish an approach that has to date been uniformly rejected. If the Court accepts this invitation, it will have reversed itself and overruled the PLSRA.

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<sup>4</sup>Rule 8 requires that a complaint must contain "a *short and plain* statement of the claim. . . ." (emphasis added). The courts uniformly hold that "the particularity demands of pleading fraud under Rule 9(b) in no way negate the commands of Rule 8. *In re Westinghouse Securities Litigation*, 907 F.3d 696, 703 (3d Cir. 1996); *Viacom, Inc. v. Harbridge Merchant Services, Inc.*, 20 F.3d 771, 776 (7<sup>th</sup> Cir. 1994).

**B. Plaintiffs' Group Pleading Approach Has Been Rejected Repeatedly and Justifiably by This Court.**

As part of the “puzzle” and in lieu of particularized allegations specific to each Officer Defendant, Plaintiffs’ Complaint relies substantially on “group pleading.” The Complaint contains over 200 generic references to “defendants” and over 240 generic references to “management.” In the key “liability” paragraphs of the Complaint (particularly paragraphs 2-4, 89, and 395-400), Plaintiffs are unabashedly straightforward in their reliance on group pleading.<sup>5</sup> In light of the PSLRA, however, this “group pleading” approach has been unambiguously rejected by this Court (not just once, but four times), as well as other courts. *See In re Securities Litigation BMC Software*, 183 F. Supp.2d at 913 n.50; *Coates v. Heartland Wireless Communications*, 26 F. Supp. 2d 910, 916 (N.D. Tex. 1998); *Allison v. Brooktree Corp.*, 999 F. Supp. 1342, 1350 (S.D. Cal. 1998). Both the language and the purpose of the PSLRA dictated this result. As Judge Fitzwater commented: “It is nonsensical to require that a plaintiff specifically allege facts regarding scienter as to each defendant, but to allow him to rely on group pleading in asserting that the defendant made a statement or omission.” *Coates v. Heartland Wireless Communication*, 26 F. Supp. 2d at 915.

**C. Failure to Plead a Securities Fraud Claim with the Requisite Particularity Calls for Dismissal.**

In *Lovelace v. Software Spectrum, Inc.*, 78 F.3d 1015, 1017 (5<sup>th</sup> Cir. 1996), the Fifth Circuit made clear that failure to plead securities fraud with sufficient particularity required dismissal of the case. *See also Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 407 (5<sup>th</sup> Cir. 2001); *Tuchman v. DSC*

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<sup>5</sup> In paragraph 89, Plaintiffs assert that “[i]t is appropriate to treat the Enron Defendants as a group for pleading purposes and presume that the false, misleading and incomplete information in the Company’s public filings, press releases and other publications . . . are the collective actions of the Enron Defendants . . . .”

*Communications Corp.*, 14 F.3d at 1070. Any nagging doubts about whether dismissal is an overly harsh consequence should be eliminated in this case by the brazen refusal of Plaintiffs to heed this Court's rejection of the group pleading doctrine.

## II. THE REQUIREMENTS OF PLEADING SCIENTER ARE PLAIN.

The PSLRA requires that: “with respect to each act or omission alleged to violate this chapter, [plaintiffs must] *state with particularity facts* giving rise to a *strong inference* that the Defendant acted with the required state of mind.” 15 U.S.C. § 78u-4(b)(2) (emphasis added); *see also Nathenson v. Zonagen, Inc.*, 267 F.3d at 407 (“In order to survive a motion to dismiss, a plaintiff alleging a Section 10(b)/Rule 10(b)(5) claim must now plead *specific facts* giving rise to a ‘*strong inference*’ of scienter.”) (emphasis added); *Lovelace v. Software Spectrum, Inc.*, 78 F.3d at 1017 (Plaintiffs must “set forth *specific facts* sufficient that indicate conscious behavior on the part of the Defendants.”) (emphasis added). If a plaintiff fails to meet this requirement as to any individual defendant, the district court shall dismiss the complaint against that defendant. 15 U.S.C. § 78u-4(b)(3).

The Fifth Circuit has concluded, as have the First, Third, Sixth and Eleventh Circuits, that a state of mind characterized by severe recklessness or willful conduct constitutes scienter for purposes of section 10(b) and Rule 10b-5. *Nathenson*, 267 F.3d at 409. The alleged facts must raise a strong inference that the individual *knew* “that [he or she was] publishing materially false information, or the party must [have been] severely reckless in publishing that information.” *Lovelace v. Software Spectrum*, 78 F.3d at 1020 (emphasis added). Severe recklessness is limited to “those highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that

present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it.” *Nathenson*, 267 F.3d at 408 (quoting *Broad v. Rockwell*, 642 F.2d 929, 961-62 (5<sup>th</sup> Cir. 1981) (en banc)).

Conclusory allegations of fraudulent intent cannot survive a motion to dismiss. *In re Waste Management Securities Litigation*, H-99-2183, slip op. at 20 n.7 (S.D. Tex. Aug. 16, 2001) (Harmon J.). In rejecting allegations similar to those alleged here, this Court clearly stated what must be alleged to survive a motion to dismiss: “Plaintiffs must allege what actions *each* Defendant took in furtherance of the alleged scheme and specifically plead *what he learned, when he learned it and how Plaintiffs know what he learned.*” *In re Securities Litigation BMC Software*, 183 F. Supp. 2d at 885 (emphasis added). *See also In re Baker Hughes Securities Litigation*, 136 F. Supp. 2d 630, 647 (S.D. Tex. 2001).

Plaintiffs’ allegations against the individual Officer Defendants fail to satisfy these requirements for pleading scienter. Instead Plaintiffs plead generally that the individual Officer Defendants had the requisite scienter based on their executive positions with Enron, their involvement in day-to-day management of Enron’s business, their access to internal corporate documents, their conversations with corporate officers and employees, their attendance at management and Board meetings, their bonus payments, and their sales of Enron stock. (*Newby* Complaint ¶ 399-401.) As set forth below, these general allegations are not enough to allege scienter, much less a strong inference of scienter.

**A. Allegations Regarding Individual Defendant’s Position as an Enron Officer Do Not Sufficiently Plead Scienter and a Securities Fraud Claim.**

Each of the Officer Defendants is or was an officer of Enron, and in the Complaints

Plaintiffs identify each of them through specific titles or management positions (in many cases, accurately, and in a few instances, inaccurately). Paragraph 88 contains the most comprehensive allegations regarding the Officer Defendants' respective positions; it also alleges that each Officer Defendant was a member of Enron's Management Committee or Executive Committee at some time during the years 1997-2000. It is unclear whether Plaintiffs' allegations as to management positions are intended as anything more than biographical information, although the first two sentences of paragraph 88 suggest that the Plaintiffs may argue that membership on the Management or Executive Committee somehow implicates each Officer Defendant in securities fraud. The law, however, does not condemn as guilty of securities fraud an officer of a public corporation merely because he or she is an officer.

To the contrary, this Court and many others have declined to find liability based on a defendant's status and duties as an officer. *See In re Securities Litigation BMC Software*, 183 F. Supp. 2d at 886-87 (scienter requires more than a showing that the defendant was an officer involved in the day-to-day management of the company, had access to internal corporate documents, communicated with other officers, or attended management meetings); *Coates v. Heartland Wireless Communications*, 26 F. Supp. 2d at 916-17 ("Plaintiffs must properly plead wrongdoing and scienter as to each individual defendant and cannot merely rely on the individuals' positions or committee memberships"); *In re Azurix Corp. Securities Litigation*, 2002 WL 562819 at \*23 (S.D. Tex. Mar. 21, 2002) ("merely alleging that the defendants knew or had access to information by virtue of their board or managerial positions is not sufficient to plead scienter"); *In re Advanta Corp. Securities Litigation*, 180 F.3d 525, 539 (3d Cir. 1999) ("Generalized imputations of knowledge do not suffice, regardless of the defendants' positions within the company"); *Lirette v. Shiva Corp.*, 27

F. Supp. 2d 268, 283 (D. Mass. 1998) (“inferences that the defendants by virtue of their positions within the company, ‘must have known about the problems when they undertook the allegedly fraudulent actions’ . . . are precisely the types of inferences which this court, on numerous occasions, has determined to be inadequate to withstand the special pleading requirements in securities fraud cases.”); *In re NAHC, Inc. Securities Litigation*, 2001 WL 1241007 \*18 (E.D. Pa. Oct. 17, 2001). *See also In re Baker Hughes Securities Litigation*, 136 F. Supp. 2d at 648 (dismissing claims based on “generalized allegations that the Defendants were intimately familiar with [the company’s] daily operations and were otherwise knowledgeable of [the company’s] actual financial situation”); *Eizenga v. Stewart Enters.*, 124 F. Supp. 2d at 982-84 (allegations that executives “closely monitored” the company’s performance and had “intimate involvement in the day-to-day management of its business” held insufficient).

**B. Allegations Regarding Bonus Payments to Individual Defendants Do Not Sufficiently Plead Scienter and a Securities Fraud Claim.**

Plaintiffs allege that some of the Officer Defendants received bonus payments “based on Enron’s false financial reports and because Enron stock hit certain performance targets.” Presumably, the desired implication is that such incentive compensation motivated them to commit securities fraud. Even before enactment of the PSLRA, the Fifth Circuit rejected that argument in *Melder v. Morris*, 27 F.3d 1097, 1102 (5<sup>th</sup> Cir. 1994). To infer scienter, the Court held, from the allegation that “defendant officers and directors were motivated by incentive compensation[,] would effectively eliminate the state of mind requirement as to all corporate officers and defendants.” *See also Nathenson*, 267 F.3d at 420; *In re Baker Hughes Securities Litigation*, 136 F. Supp. 2d at 645-6.

The Southern District of Texas recently addressed this point with regard to the incentive

program at Azurix (which was closely affiliated with Enron and had an incentive compensation program similar to Enron's) in *In re Azurix Corp. Securities Litigation*. The Azurix Plaintiffs alleged that the officer defendants were "motivated to commit securities fraud by artificially inflating the price of Azurix stock because Azurix's executive compensation program was designed to reward performance that directly correlated with Azurix's success." *Id.* at \*22. Judge Lake, however, held that the "alleged desire to increase compensation does not support a strong inference of scienter." *Id.* (citing *Tuchman v. DSC Communications Corp.*, 14 F.3d at 1068-69; *Melder v. Morris*, 27 F.3d at 1102).

Similarly, other courts have also found that incentive compensation does not *per se* demonstrate scienter. *E.g.*, *Kalnit v. Eichler*, 264 F.3d 131, 140 (2<sup>nd</sup> Cir. 2001) ("[P]laintiff's allegation that defendants were motivated to conceal the . . . communications to protect . . . lucrative compensation provisions . . . are too generalized to support scienter adequately. . . . [A]n allegation that defendants were motivated by a desire to maintain or increase executive compensation is insufficient because such a desire can be imputed to all corporate officers."). As the Court in *In re NAHC, Inc. Securities Litigation* pointed out, companies can establish a bonus system or other incentive compensation program for a valid business purposes, such as the recruitment, retention, or incentivization of employees. 2001 WL 1241007, at \*18 ("Allegations that the defendants benefitted from an alleged fraud by incentive compensation . . . have been held insufficient to plead motive under the PSLRA standard . . . . Moreover, the creation of a bonus system to retain key corporate executives . . . is a valid business purpose . . . .") It follows that such a bonus program cannot evidence securities fraud.

**C. Allegations of Insider Trading and the Hakala Declaration are Unspecific, Conclusory, and Contradictory, and Do Not Sufficiently Plead Scienter and a Securities Fraud Claim.**

Plaintiffs assert that all of the Officer Defendants sold Enron stock during the alleged Class Period. Plaintiffs further assert that *all* such sales were illegal “insider trades” (Complaint ¶ 86), and that *all* such insider trades are evidence of scienter on the part of *all* Officer Defendants (Complaint ¶¶ 401-403, 406-416).

**1. Plaintiffs’ Allegations Do Not Satisfy Applicable Standards for Pleading Insider Trading.**

This Court recently summarized the pleading requirements for a claim for securities fraud based on insider trading in *In re Securities Litigation BMC Software, supra*. To state a claim, the plaintiff must show that a defendant (1) used material nonpublic information, (2) knew or recklessly disregarded that the information was material and nonpublic, and (3) traded contemporaneously with the plaintiff. *Id.* at 916. With regard to the key element of scienter, conclusory allegations are insufficient to meet the heightened pleading requirements of Rule 9(b) and the PSLRA. *Id.* at 901. Rather, plaintiffs must plead specifically “what nonpublic information was used by [d]efendants to trade and how they knew such information was material or nonpublic.” *Id.* at 916.

In addition, “[i]nsider’ trading must be ‘unusual’ to have meaningful probative value.” *Nathenson v. Zonagen, Inc.*, 267 F.3d at 420-21 (5<sup>th</sup> Cir. 2001); *Greebel v. FTP Software, Inc.*, 194 F.3d 185, 198 (1<sup>st</sup> Cir. 1999) (requiring trading be “unusual, well beyond the normal patterns of trading by those defendants”). To be “unusual,” and therefore probative of scienter, the allegations of insider trading must set forth “trading at suspicious times and in suspicious amounts by corporate insiders, out of line with prior trading practices.” *In re Securities Litigation BMC Software*, 183 F.

Supp. 2d at 901 (citing *Rubenstein v. Collins*, 20 F.3d 160, 169-70 (5<sup>th</sup> Cir. 1994); *Shaw v. Digital Equipment Corp.*, 82 F.3d 1194, 1204 (1<sup>st</sup> Cir. 1996); *Greebel v. FTP Software, Inc.*, 194 F.3d at 197-98, 206; *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 987 (9th Cir.), *reh 'g and reh 'g en banc denied*, 195 F.3d 521 (9th Cir. 1999).

In keeping with the pleading requirements of particularity and specificity, efforts to plead scienter based on insider trading must be evaluated on a person-by-person basis. *E.g.*, *Allison v. Brooktree*, 999 F. Supp. at 1352 (“Since scienter must be pled as to each defendant, the court analyzes the stock sales of each defendant.”). Not surprisingly, the trading histories of the Officer Defendants vary widely. Just as they cannot fairly be treated in broadbrush, conclusory, group pleadings, so too the deficiencies of Plaintiffs’ insider trading allegations cannot all be dealt with in a collective manner. Accordingly, the allegations as to each of the Officer Defendants are examined in the separate Motions filed on their behalf. Nonetheless, the following four points are common to Plaintiffs’ “insider trading” claims as asserted against all of the Officer Defendants.

**a. An Extraordinarily Long Class Period Confounds Insider Trading Analyses.**

Plaintiffs have pled an extraordinarily long Class Period – from October 19, 1998 through November 27, 2001 – a period of over three years, over 37 months, over 162 weeks. This extended class period significantly shapes – indeed, distorts – Plaintiffs’ insider trading case. It can be expected that some insiders will trade in their company’s securities. *See In re Advanta Corp. Securities Litigation*, 180 F.3d at 541 (because many corporate executives are compensated with stock and options, “[i]t follows then that they will trade those securities in the normal course of events.”), cited in *In re Waste Management Securities Litigation*, H-99-2133, slip op. at \*130. When

one considers the likelihood that any given officer or director of *any* public company in the United States sells stock in that company over a three-year period, one recognizes that the longer the class period, the more voluminous *yet less probative* sales by insiders within the class period become.

The unfair skewing of the portrayal of insider trading by an extended class period was recognized by the Ninth Circuit in *In re The Vantive Corp. Securities Litigation*, 283 F.3d 1079 (9<sup>th</sup> Cir. 2002), with reference to a complaint (also filed by Milberg Weiss) that alleged “an unusually long class period of sixty-three weeks”:

It is obvious why they have done so; it is not because the allegations found elsewhere in the complaint support an inference of fraud throughout the class period, but because lengthening the class period has allowed the plaintiffs to sweep as many stock sales into their totals as possible, thereby making the stock sales appear more suspicious than they would be with a shorter class period.

*Id.* at 1092. In *In re Vantive*, the “unusually long class period” was 63 weeks; here it is almost *two years* longer than that. As in *In re Vantive*, the allegations of insider trading over an abnormally protracted class period should be dismissed.

**b. Failure to Consider Pre-Class Period Sales Undermines the Conclusion of Insider Trading.**

In connection with evaluating whether allegations of insider trading give rise to a strong inference of scienter, this Court and others have adverted to the importance of pre-class period sales.

Plaintiffs must delineate unusual trading at suspicious times and in suspicious amounts by corporate insiders, *out of line with prior trading practices*, for such conduct to be probative of scienter.

*In re Securities Litigation BMC Software*, 183 F. Supp. 2d at 901 (emphasis added). *See also In re Silicon Graphics*, 183 F.3d at 987 (sales of stock cannot be considered “unusual” where a defendant “ha[s] no significant trading history for purposes of comparison”); *Greebel v. FTP Software, Inc.*,

194 F.3d at 198; *Lirette v. Shiva Corp.*, 27 F. Supp. 2d at 283 (“[o]ne fact necessary to a showing of unusualness is the amount of trading that the insider conducted before or after the class period”).

Plaintiffs give a passing nod to that factor in the graphs they have created for each Enron defendant they allege engaged in illegal insider trading in paragraphs 83(a) through 83(cc). The left-hand portion of each graph purportedly depicts “Pre-Class Period Shares Sold.” For all but one of the Officer Defendants, Plaintiffs’ graphs show *no* pre-Class Period sales; in effect, for all but one of the Officer Defendants, Plaintiffs allege that they did not sell *any* Enron stock before the Class Period. That allegation however, is demonstrably false.<sup>6</sup> To be sure, not all Officer Defendants were obligated to file Forms 3, 4, and 5 before the Class Period, so pre-Class Period sales data for some Officer Defendants was not readily available to Plaintiffs. Nevertheless, neither the Plaintiffs nor this Court can justifiably assume that those Officer Defendants *did not* sell stock before the Class Period. Even more troublesome is Plaintiffs’ failure to consider such pre-Class Period data for two of the Officer Defendants for whom it *was* available, which renders suspect the thoroughness and integrity of their insider trading presentation. In any event, the Court most certainly should not accept the implicit allegation that the vast majority of the Officer Defendants did not sell any Enron stock before the Class Period.

**c. Failure to Tie Trades to Significant Events or Announcements is**

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<sup>6</sup>SEC Form 3 is the Initial Statement of Beneficial Ownership of Securities. Form 4 is the Statement of Changes in Beneficial Ownership. Form 5 is the Annual Statement of Changes in Beneficial Ownership. These forms are a source of information available to Plaintiffs in their “analysis” of trading by the Officer Defendants.

Appended are copies of relevant SEC Form 4s for Richard A. Causey (Ex. A) and Stanley C. Horton (Ex. B). In their Complaint, Plaintiffs report no pre-Class Period sales by Mr. Causey, and for Mr. Horton pre-Class Period sales only in the first quarter of 1998. Plaintiffs are demonstrably wrong: Exhibit A shows publicly reported pre-Class Period sales by Mr. Causey of 28,135 shares. Exhibit B shows pre-Class Period sales by Mr. Horton of 31,660 shares that Plaintiffs missed.

**Fatal.**

For stock trades to support a strong inference of scienter, the purchases or sales must be “suspicious” in amount and timing. The archetypical suspicious insider trade would be one (a) transacted just prior to a significant announcement, and (b) unusual in amount and timing in comparison to that individual’s trading history. To complete the picture, one would expect plaintiffs complaining of insider trading to explain how the particular individual had prior knowledge of the information that was announced and to allege facts showing that the market actually reacted to the announcement. Plaintiffs’ allegations could not be further from the archetype. Plaintiffs made no effort to tie an individual trade to any announcement or omission. Instead, their model is that for these years, these individuals had information that should have led them to believe that Enron’s stock price would collapse at any moment. Had this been true, however, the Officer Defendants would have sold all of their holdings as early in the Class Period as possible.

Moreover, having failed to tie any trades to specific announcements or omissions, Plaintiffs cannot explain what the individual Officer Defendants knew about that event. Finally, although Plaintiffs graph Enron’s stock price history, they do not tie the movements in that graph to specific events, announcements, or omissions.

**d. Plaintiffs’ Calculations of Each Insider’s Percentage of Stock Sales during the Class Period Is Unreliable.**

In paragraph 402, Plaintiffs assert that for most of the Enron insiders, their stock sales during the class period was a “large percentage” of their overall Enron holdings. To demonstrate and support that point, they include a chart (on page 260 of the Complaint) that purports to calculate, for each Officer Defendant, a percentage of his/her Enron stock holdings sold during the Class Period.

The percentages reflected in this chart are the same percentages alleged by Plaintiffs in paragraphs 83(a) through 83(cc). Their calculation of percentages, however, is unreliable because it is based on incomplete information and what appears to be a flawed methodology.

The desired percentage is: (A) the number of Enron shares sold during the Class Period, divided by (B) the individual's overall Enron stock holding that was available for sale during the Class Period. It is Plaintiffs' calculation of (B) that is suspect, and that in turn renders suspect their entire presentation of percentages. Obviously, the percentage can only be accurate if the underlying numbers are accurate – including the number comprising (B), or the denominator of the fraction that is the percentage. But *nowhere do Plaintiffs* explain how they derived the denominators they used for each insider or *allege that the denominators are in fact accurate and reliable*. In point of fact, it appears that they “backed” into the numbers used as denominators, and, as explained in the footnote,<sup>7</sup> their methodology is both subject to manipulation and otherwise unreliable.

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<sup>7</sup> In the absence of any explanation from Plaintiffs about how they derived their percentages or constructed the chart in paragraph 402, page 260, one can only reconstruct and guess at what they must have done. In constructing their chart, Plaintiffs evidently proceeded as follows for each Enron insider:

(a) First, from a “Source” document (identified in the second column of the chart), they derived information on the insider's holding of common stock, options, and “total” as of the date of the Source document. *Significantly, the dates of these “Source” documents range from as early as December 1998 to as late as February 15, 2001, the “as of” date for stock holdings reported in Enron's 2001 Proxy statement. It is possible that for any insider the data could be manipulated by the choice of “Source” document to use, and Plaintiffs have not alleged anything to eliminate that possibility.*

(b) Then, they purport to identify, for each “insider,” the number of shares that insider sold before the date of the particular “Source” document used for that insider. *There is no indication, however, as to how Plaintiffs arrived at this figure, what the sources of their information were, or whether they consulted all relevant sources. There is no averment that this tabulation is correct. For that matter, there is some ambiguity about the period the number supposedly covers: whether it is all sales of Enron stock by the insider going back to that insider's first sale, or rather all sales after October 19, 1998, the beginning of the class period.*

(c) They then add the total holdings as of the date of the Source document (from the 5th

Consequently, the Complaint fails to set forth a sufficient basis for this Court to rely on the percentages of stock sales alleged by Plaintiffs in paragraphs 83(a) - 83(cc) and 402.

**2. The Hakala Declaration Merits No Consideration and is Procedurally Inappropriate.**

Most of the Complaint's allegations regarding "insider trading" are based on the Declaration of Scott D. Hakala (*see* Complaint ¶¶ 406-416 and Ex. B). Dr. Hakala is touted as "an expert in security market econometrics and insider trading." (Complaint ¶ 406.)

Much could and should be said about Dr. Hakala's opinions and conclusions. For example, Dr. Hakala essentially hypothesizes a "rational" insider as his benchmark for evaluating insider trading, and where trades do not conform to his "rational" model, he condemns them. One of the hallmarks of Dr. Hakala's "rational" insider is that he/she does not "prematurely" exercise stock options. This approach conveniently ignores every reason that is personal or idiosyncratic to an insider *yet still legitimate*, including, to name only a few: births, deaths, divorces, new homes, marriages or the education of children, charitable contributions, diversification of risk, etc. In other words, Dr. Hakala's rational insider has no life. Using his model of rationality, Dr. Hakala purports to analyze over 1000 trades by 26 Enron "insiders" over the three-plus year class period. In the end,

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column) and the "Shares Sold Prior to Report Date" (from the 6th column) to arrive at "Available Holdings" (listed in the 7th column).

(d) Finally, after tabulating the shares sold by each insider during the Class Period (listed in the 8<sup>th</sup> column), they divide that figure by the insider's "Available Holdings" to arrive at "Percent of Shares Sold" for each insider.

In addition to the problems discussed in connection with steps a and b above, *Plaintiffs failed to factor into their calculation shares acquired by any insider after the date of the "Source" document they used for that individual.* If, for example, an individual officer acquired stock after the date of his "Source" document, either on the open market or by way of compensation, that stock apparently is not included in the "Available Holdings." The effect would be to overstate the "Percent of Shares Sold."

he does not exonerate from trading on material non-public information *any* of those insiders, nor does he concede that *any* of the 1000+ trades he “analyzed” was legitimate – *i.e.*, not influenced by material non-public information. Obviously, serious questions can be raised concerning Dr. Hakala’s conclusions, his methodology, and his objectivity.

But at this stage of the proceedings, the Hakala Declaration is beside the point; *it should not be considered at all*. That is the square holding of the court in *Demarco v. Depotech Corp.*, 149 F. Supp. 2d 1212 (S.D. Cal. 2001), *aff’d*, 2002 WL 461217, \*1 (9<sup>th</sup> Cir. Feb. 21, 2002). The *Demarco* court explained that consideration of an expert’s affidavit in connection with a motion to dismiss a securities fraud claim would raise a myriad of complex evidentiary and procedural issues not capable of resolution at the pleading stage. *Id.* at 1221. A thorough evaluation of the proffered affidavit, for example, would require a deposition of the “expert” and a Daubert hearing to determine the admissibility of any opinions. “These additional proceedings would be improper at the pleading stage of any civil case, and would likely run afoul of the discovery stay imposed by the Reform Act.” *Id.* Furthermore, the expert’s opinion does not relieve the plaintiffs of their PSLRA and Rule 9(b) pleading burden to support their claims with specific factual allegations. “Conclusory allegations and speculation carry no additional weight merely because a plaintiff placed them within the affidavit of a retained expert.” *Id.* at 1222. For these and other reasons, the court in *Demarco* granted defendants’ motion to strike the expert affidavit that plaintiff had filed with its securities fraud class action complaint.

The same considerations are applicable to the Hakala Declaration. If anything, the Daubert issues implicated here are even more pressing as Dr. Hakala’s opinions purport to be based on a statistical analysis. To evaluate Dr. Hakala’s assertions properly, the Officer Defendants must have

access to and an opportunity to evaluate the formulas, methodology, calculations, and source data he used. Even more importantly, “considering an expert affidavit would so complicate the procedural posture of a motion to dismiss that it would become virtually indistinguishable from a motion for summary judgment.” *Id.* at 1221. Because consideration of the Hakala Declaration would be improper, the Officer Defendants request the Court to strike it from the Consolidated Complaint.

### **III. PLAINTIFFS’ SECTION 20(a) AND 20A CLAIMS ARE SIMILARLY UNSPECIFIC AND INSUFFICIENT.**

In their “First Claim for Relief” (Complaint ¶¶ 992-97), Plaintiffs purport to allege claims under Section 20(a) – in addition to Section 10(b) – of the 1934 Act against all Defendants who are included in four comprehensive lists of Enron’s “top executives and directors,” the accountants, the lawyers, and the investment banks. Section 20(a) is, of course, the “controlling person” provision of the Exchange Act; it establishes a derivative liability of persons who “control” those who are primarily liable under the Exchange Act. Plaintiffs, however, don’t say anything about “controlling person” liability in paragraphs 992-97, nor are there any allegations of “control” as to any of the Officer Defendants.

Nor elsewhere in the Complaint are there sufficient allegations that any of the Officer Defendants had “the power to control” any person alleged to be a primary violator. To be sure, with regard to each Officer Defendant there are allegations as to his or her management position within Enron, but such allegations of position are, of themselves, inadequate. *See* section II.A, *supra*. In any event, with regard to “controlling person” liability, to the extent there are any allegations, they fall far short of meeting the pleading particularity requirement of the PSLRA. *See In re Splash*

*Technology Holdings, Inc. Securities Litigation*, 2000 WL 1727377, \*20 (N.D. Cal. Sept. 29, 2000) (“the complaint must plead the circumstances of the control relationship with particularity”); *Abbott v. Equity Group, Inc.*, 2 F.3d 613, 619-20 (5<sup>th</sup> Cir. 1993), *cert. denied*, 510 U.S. 1177 (1994); *Rich v. Maidstone Financial, Inc.*, 2001 WL 286757, \*6 (S.D.N.Y. Mar. 23, 2001) (“much more than a bare allegation of ‘control status’ is required to state a claim”).

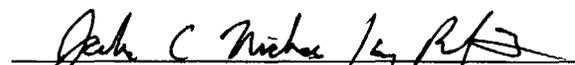
Furthermore, as this Court has previously recognized, allegations that are “insufficient to state a claim for securities fraud under section 10(b) and Rule 10b-5” are also insufficient “as a matter of law” to state a claim under section 20(a). *In re Securities Litigation BMC Software*, 183 F. Supp. 2d at 916; *see also Greebel v. FTC Software*, 194 F.3d at 207; *Lovelace v. Software Spectrum, Inc.*, 78 F.3d at 1021 n. 8. For all Officer Defendants as to whom Plaintiffs have failed adequately to allege any predicate section 10(b) or Rule 10b-5 violation, Plaintiffs cannot maintain a section 20(a) claim either.

In Plaintiffs’ “Second Claim for Relief” (Complaint ¶¶ 998-1004), Plaintiffs assert under Section 20A of the Exchange Act claims against all “Enron Defendants” who sold Enron stock during the Class Period, a class of Defendants that includes all of the Officer Defendants. However, like Section 20(a) claims, “claims under section 20A are derivative, requiring proof of a separate underlying violation of the Exchange Act.” *In re Advanta Corp. Securities Litigation*, 180 F.3d at 541; *Jackson Nat’l Life Ins. Co. v. Merrill Lynch & Co.*, 32 F.3d 697, 703 (S.D.N.Y. 1994); *In re VeriFone Securities Litigation*, 11 F.3d 865, 872 (9<sup>th</sup> Cir. 1993). For all Officer Defendants as to whom Plaintiffs have failed adequately to plead a predicate violation of section 10(b) or Rule 10b-5, the section 20A “insider trading” claims must also be dismissed. *See, e.g., In re Advanta Corp. Securities Litigation*, 180 F.3d at 541.

## CONCLUSION

This Joint Brief is to be read in conjunction with the Enron Disclosure Brief and the individual Motions to Dismiss filed on behalf of each of the Officer Defendants. What emerges from a careful parsing of the Complaints is in many respects quite remarkable. Enron has been subjected to perhaps the most intensive examination of any company in American history. Despite the benefit of that examination, in over 800 pages of Complaints, the Plaintiffs actually say next to nothing about the Officer Defendants. Plaintiffs plainly do not satisfy the most fundamental pleading requirements. Consequently, the claims against many of the Officer Defendants should be dismissed with prejudice. To the extent that claims against the Officer Defendants survive this Court's ruling on the Officer Defendants' Motions to Dismiss, Plaintiffs should be required to replead their claims in conformity with Rules 8 and 9(b) and the requirements of the PSLRA.

Respectfully submitted,

  
Jack C. Nickens  
State Bar No. 15013800  
1000 Louisiana Street, Suite 5360  
Houston, Texas 77002  
(713) 571-9191  
(713) 571-9652 (Fax)

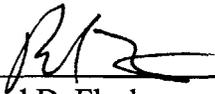
ATTORNEY-IN-CHARGE FOR DEFENDANTS  
RICHARD B. BUY, RICHARD A. CAUSEY,  
MARK A. FREVERT, STANLEY C. HORTON,  
STEVEN J. KEAN, MARK E. KOENIG,  
MICHAEL S. McCONNELL, JEFFREY McMAHON,  
CINDY K. OLSON, KENNETH D. RICE, and  
LAWRENCE GREG WHALLEY

OF COUNSEL:

Paul D. Flack  
State Bar No. 00786930  
NICKENS, LAWLESS & FLACK, L.L.P.  
1000 Louisiana Street, Suite 5360  
Houston, Texas 77002  
(713) 571-9191  
(713) 571-9652 (Fax)

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was forwarded to all counsel listed on the attached Exhibit A Service List by e-mail or facsimile on this 8<sup>th</sup> day of May, 2002.

  
\_\_\_\_\_  
Paul D. Flack

# FORM 4

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## UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

### STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

OMB APPROVAL  
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1. Name and Address of Reporting Person\*  
**CAURRY** **RICHARD A.**  
 (Last) (First) (Middle)  
**1400 SMITH STREET**  
 (Street)  
**HOUSTON, TEXAS 77002-7369**  
 (City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol  
**EXXON CORP. (EXX)**

3. IRS or Social Security Number of Reporting Person (Voluntary)  
**940-66-6681**

4. Statement for Month/Year  
**October 1998**

5. If Amendment, Date of Original (Month/Year)

6. Relationship of Reporting Person(s) to Issuer (Check all applicable)  
 Director \_\_\_\_\_ 10% Owner \_\_\_\_\_  
 Officer  Other \_\_\_\_\_  
 (give title below) (specify below)  
**SENIOR VP, CHIEF ACCOUNTING, INFORMATION & ADMIN. OFFICER**

7. Individual or Joint/Group Filing (Check Applicable)  
 Form filed by One Reporting Person  
 \_\_\_\_\_ Form filed by More than One Reporting Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of In-direct Beneficial Ownership (Instr. 4)
			V	Amount (A) or (D)			
Common Stock	05/19/98	A	V	1,496,000	A		\$0.0000
Common Stock	05/04/98	A	V	4,000,000	A		\$0.0000
Common Stock	10/16/98	X		180,000	A		\$12.9573
Common Stock	10/16/98	E		150,000	D		\$53.2680
Common Stock	10/16/98	X		1,400,000	A		\$26.5000
Common Stock	10/16/98	E		1,400,000	D		\$53.2680
Common Stock	10/16/98	X		4,500,000	A		\$33.5000
Common Stock	10/16/98	E		4,500,000	D		\$53.2680
Common Stock	10/16/98	X		2,780,000	A		\$33.5000
Common Stock	10/16/98	E		2,780,000	D		\$53.2680

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Table II -- Derivatives Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Beneficially Owned at End of Month (Instr. 4)	10. Ownership Form of Derivative Security: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				(A)	(D)	Date Exercisable	Expiration Date					
Employee Non-Qualified Stock Option (right to buy)	\$13.9375	10/16/98	M		180,000		01/30/99/01/30/01	Common Stock		0,000	D	
Employee Non-Qualified Stock Option (right to buy)	\$28.5000	10/16/98	M		1,400,000		03/07/99/03/07/99	Common Stock		0,000	D	
Employee Non-Qualified Stock Option (right to buy)	\$33.5000	10/16/98	M		4,500,000		03/07/99/03/07/99	Common Stock		0,000	D	
Employee Non-Qualified Stock Option (right to buy)	\$33.5000	10/16/98	M		2,760,000		03/07/99/03/07/99	Common Stock		0,000	D	
Employee Non-Qualified Stock Option (right to buy)	\$30.5000	10/16/98	M		2,700,000		06/10/99/12/30/99	Common Stock		1,800,000	D	
Employee Non-Qualified Stock Option (right to buy)	\$36.7500	10/16/98	M		6,155,000		05/23/99/05/23/99	Common Stock		0,000	D	
Employee Non-Qualified Stock Option (right to buy)	\$36.7500	10/16/98	M		10,500,000		05/01/99/05/01/99	Common Stock		9,500,000	D	

Explanation of Responses:

(1) 401(k) plan uses unit accounting system which assumes that the Enron Corp. stock fund is fully invested in shares of Enron Corp. Common Stock (notwithstanding that the fund may hold some uninvested cash or shares of Enron Corp. Cumulative Second Preferred Convertible Stock of which each share is presently convertible into 13.632 shares of Common Stock). Reporting person is entitled to a distribution of the entire amount in shares of Enron Corp. Common Stock.

*Richard C. ...*  
 Signature of Reporting Person

11-5-98  
 Date

\*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space provided is insufficient, See Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays the currently valid OMB Number.

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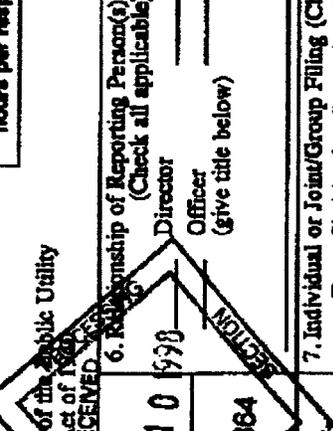
## UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

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### STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 1700 of the Public Utility Holding Company Act of 1935 or Section 3000 of the Investment Company Act of 1940.

1. Name and Address of Reporting Person*		2. Issuer Name and Ticker or Trading Symbol		3. Relationship of Reporting Person(s) to Issuer (Check all applicable)	
CAUSEY	RICHARD A.	ENRON CORP. (ENE)	ENR	Director	10% Owner
(Last)	(First)			Officer (give title below)	Other (specify below)
1400 SMITH STREET	(Middle)	3. IRS or Social Security Number of Reporting Person (Voluntary)	4. Statement for Month/Year	6. Reporting Period (Check all applicable)	
(Street)			October 1998	10/10/98	10/10/98
HOUSTON, TEXAS 77002-7369	(City)	5. If Amendment, Date of Original (Month/Year)		7. Individual or Joint/Group Filing (Check Applicable)	
(State)	(Zip)			Form filed by One Reporting Person	Form filed by More than One Reporting Person



1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of In-direct Beneficial Ownership (Instr. 4)
			Code	V Amount			
Common Stock	10/16/98	M		2,700.000 A		D	
Common Stock	10/16/98	S		2,700.000 D		D	
Common Stock	10/16/98	M		6,155.000 A		D	
Common Stock	10/16/98	S		6,155.000 D		D	
Common Stock	10/16/98	M		20,500.000 A		D	
Common Stock	10/16/98	S		20,500.000 D	17,885.000	D	
Common Stock					565.528	Z	by ESOP
Common Stock					3,292.493	Z	by 401 (k) Plan (S)

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly \* If the form filed by more than one reporting person, see Instruction 4(b)(v).



# FORM 4

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U.S. SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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## STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

1. Name and Address of Reporting Person <b>HORTON STANLEY C</b> (Last) (First) (Middle) <b>1400 SMITH STREET</b> (Street) <b>HOUSTON, TEXAS 77002-7369</b> (City) (State) (Zip)		2. Issuer Name and Ticker or Trading Symbol <b>ENRON CORP. (ENE)</b> <b>2956</b>		6. Relationship of Reporting Person to Issuer (Check all applicable) Director _____ 10% Owner _____ Officer <input checked="" type="checkbox"/> Other _____ (give title below) (specify below) <b>CO-CHAIRMAN AND CEO, ENRON OPERATIONS CORP</b> <i>STANLEY C HORTON</i>	
3. IRS or Social Security Number of Reporting Person (Voluntary) <b>267-88-8151</b>		4. Statement for Month/Year <b>May 1996</b>		5. If Amendment, Date of Original (Month/Year)	

Table I -- Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of In-direct Beneficial Ownership (Instr. 4)
			V	Amount (A) or (D)			
Common Stock					7,304.827	I	by ESOP
Common Stock	05/14/96	M		6,670.000 A	\$35.5000	D	
Common Stock	05/14/96	S		6,670.000 D	\$40.6250	D	

SECURITIES DIVISION  
MAY 28 1996  
SECTION 401  
RECEIVED  
SEC. 16(b)

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly. (Print or Type Responses) (Over)







## SERVICE LIST

<p>Lead Counsel for <i>Newby</i> Plaintiffs:</p> <p>William S. Lerach Helen J. Hodges Byron S. Georgiou Milberg Weiss Bershad Hynes &amp; Lerach LLP 401 B Street, Suite 1700 San Diego, CA 92101-5050 (619) 231-1058 (619) 231-7423 (fax)</p> <p>Melvyn I. Weiss Steven G. Schulman Samuel H. Rudman Milberg Weiss Bershad Hynes &amp; Lerach, LLP One Pennsylvania Plaza New York, NY 10119-0165 (212) 594-5300 (212) 868-1229 (fax)</p> <p>Service by e-mail: <a href="mailto:enron@milberg.com">enron@milberg.com</a></p>	<p>Local Counsel for <i>Newby</i> Plaintiffs:</p> <p>Roger B. Greenberg Schwartz, Junell, Campbell &amp; Oathout LLP Two Houston Center 909 Fannin, Suite 2000 Houston, TX 77010 (713) 752-0017 (713) 752-0327 (fax)</p> <p>Service by e-mail: <a href="mailto:rgreenberg@schwartz-junell.com">rgreenberg@schwartz-junell.com</a></p>
<p>Co-Lead Counsel for <i>Tittle</i> Plaintiffs:</p> <p>Lynn Lincoln Sarko Keller, Rohrback, LLP 1201 Third Avenue, Suite 3200 Seattle, WA 98101-3052 (206) 623-1900 (206) 623-3384 (fax)</p> <p>Service by e-mail: <a href="mailto:lsarko@kellerrohrback.com">lsarko@kellerrohrback.com</a></p>	<p>Co-Lead Counsel for <i>Tittle</i> Plaintiffs:</p> <p>Steve W. Berman Clyde A. Platt, Jr. Hagens Berman, LLP 1301 Fifth Avenue, Suite 2900 Seattle, WA 98101 (206) 623-7292 (206) 623-0594 (fax)</p> <p>Service by e-mail: <a href="mailto:steve@hagens-berman.com">steve@hagens-berman.com</a></p>

<p><b>Local Counsel for <i>Newby</i> Plaintiffs:</b></p> <p>Thomas E. Bilek  Hoeffner &amp; Bilek LLP  440 Louisiana, Suite 720  Houston, TX 77002  (713) 227-7720  (713) 227-9404 (fax)</p> <p>Service by e-mail:  <a href="mailto:tbilek722@aol.com">tbilek722@aol.com</a></p>	<p><b>Liaison Counsel for <i>Tittle</i> Plaintiffs:</b></p> <p>Robin Harrison  Justin M. Campbell, III  Campbell Harrison &amp; Dagley LLP  4000 Two Houston Center  909 Fannin Street  Houston, TX 77010  (713) 752-2332  (713) 752-2330 (fax)</p> <p>Service by e-mail:  <a href="mailto:rharrison@chd-law.com">rharrison@chd-law.com</a></p>
<p><b>Attorneys for Defendant Jeffrey Skilling:</b></p> <p>Robert M. Stern  O'Melveny &amp; Myers, LLP  555 13<sup>th</sup> Street, N.W., Suite 500W  Washington, DC 20004-1109  (202) 383-5300  (202) 383-5414 (fax)</p> <p>Service by e-mail:  <a href="mailto:rstern@omm.com">rstern@omm.com</a></p>	<p><b>Attorneys for Defendant Enron:</b></p> <p>Kenneth S. Marks  Stephen D. Susman  Karen A. Oshman  Susman Godfrey L.L.P.  1000 Louisiana, Suite 5100  Houston, TX 77002-5096  (713) 651-9366  (713) 654-6666 (fax)</p> <p>Service by e-mail:  <a href="mailto:kmarks@susmangodfrey.com">kmarks@susmangodfrey.com</a></p>
<p><b>Attorneys for Defendants Michael J. Kopper, Chewco Investments, LP, LJM Cayman, LP:</b></p> <p>Eric Nichols  Beck, Redden &amp; Secrest, L.L.P.  One Houston Center  1221 McKinney, Suite 4500  Houston, TX 77010  (713) 951-3700  (713) 951-3720 (fax)</p> <p>Service by e-mail:  <a href="mailto:enichols@brsfirm.com">enichols@brsfirm.com</a></p>	<p><b>Attorneys for Defendants The Northern Trust Company, Northern Trust Retirement Consulting LLC:</b></p> <p>Linda L. Allison  Fulbright &amp; Jaworski, LLP  1301 McKinney, Suite 5100  Houston, TX 77010  (713) 651-5628  (713) 651-5246 (fax)</p> <p>Service by e-mail:  <a href="mailto:laddison@fulbright.com">laddison@fulbright.com</a></p>

<p>Attorneys for Defendants David Stephen Goddard, Jr., Debra A. Cash, Michael M. Lowther:</p> <p>Billy Shepherd Cruse, Scott, Henderson &amp; Allen, L.L.P. 600 Travis, Suite 3900 Houston, TX 77002-2910 (713) 650-6600 (713) 650-1720 (fax)</p> <p>Service by e-mail: <a href="mailto:bshepherd@crusescott.com">bshepherd@crusescott.com</a></p>	<p>Attorneys for Defendants Philip J. Bazelides, Mary K. Joyce, James S. Prentice:</p> <p>Anthony C. Epstein Steptoe &amp; Johnson, LLP 1330 Connecticut Ave., N.W. Washington, DC 20036 (202) 429-3000 (202) 429-3902 (fax)</p> <p>Service by e-mail: <a href="mailto:aepstein@steptoe.com">aepstein@steptoe.com</a></p>
<p>Attorneys for Defendant James V. Derrick, Jr.:</p> <p>Abigail K. Sullivan Bracewell &amp; Patterson, L.L.P. South Tower Pennzoil Place 711 Louisiana, Suite 2900 Houston, TX 77002-2781 (713) 223-2900 (713) 221-1212 (fax)</p> <p>Service by e-mail: <a href="mailto:asullivan@bracepatt.com">asullivan@bracepatt.com</a></p>	<p>Attorneys for Defendant Rebecca Mark-Jusbasche:</p> <p>John J. McKetta III Graves, Dougherty, Hearon &amp; Moody, P.C. 515 Congress Avenue, Suite 2300 P.O. Box 98 78767 Austin, TX 78701 (512) 480-5600 (512) 478-1976 (fax)</p> <p>Service by e-mail: <a href="mailto:mmcketta@gdhm.com">mmcketta@gdhm.com</a></p>
<p>Attorneys for Defendant Kenneth Lay:</p> <p>James E. Coleman, Jr. Diane Sumoski Carrington, Coleman, Sloman &amp; Blumenthal, LLP 200 Crescent Court, Suite 1500 Dallas, TX 75201 (214) 855-3000 (214) 855-1333 (fax)</p> <p>Service by e-mail: <a href="mailto:deakin@ccsb.com">deakin@ccsb.com</a></p>	<p>Attorneys for Defendants Bank of America Corp., Banc of America Securities LLC:</p> <p>Charles G. King King &amp; Pennington, L.L.P. 711 Louisiana Street, Suite 3100 Houston, TX 77002-2734 (713) 225-8400 (713) 225-8488 (fax)</p> <p>Service by e-mail: <a href="mailto:cking@kandplaw.com">cking@kandplaw.com</a></p>

<p>Attorneys for Defendants Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe H. Foy, Charles A. LeMaistre, Wendy L. Gramm, Robert K. Jaedicke, Charles E. Walker, John Wakeham, John Mendelsohn, Paulo V. Ferraz Pereira, Frank Savage, Herbert S. Winokur, Jr., Jerome J. Meyer:</p> <p>Jeremy L. Doyle Robin C. Gibbs <a href="mailto:rgibbs@gibbs-bruns.com">rgibbs@gibbs-bruns.com</a> Kathy D. Patrick <a href="mailto:kpatrick@gibbs-bruns.com">kpatrick@gibbs-bruns.com</a> Gibbs &amp; Bruns, L.L.P. 1100 Louisiana, Suite 5300 Houston, TX 77002 (713) 650-8805 (713) 750-0903 (fax) <a href="mailto:jdoyle@gibbs-bruns.com">jdoyle@gibbs-bruns.com</a></p>	<p>Attorneys for Defendant John A. Urquhart:</p> <p>H. Bruce Golden Golden &amp; Owens, L.L.P. 1221 McKinney, Suite 3600 Houston, TX 77010 (713) 223-2600 (713) 223-5002 (fax)</p> <p>Service by e-mail: <a href="mailto:golden@goldenowens.com">golden@goldenowens.com</a></p>
<p>Pro se:</p> <p>Dr. Bonnee Linden Linden Collins Associates 1226 West Broadway P.O. Box 114 Hewlett, NY 11557 (516) 295-7906</p> <p>Service by Federal Express</p>	<p>Attorneys for Defendant Ken L. Harrison:</p> <p>William F. Martson, Jr. Tonkon Torp, LLP 888 S.W. Fifth Ave., Suite 1600 Portland, OR 97204-2099 (503) 802-2005 (503) 972-7407 (fax)</p> <p>Service by e-mail: <a href="mailto:enronservice@tonkon.com">enronservice@tonkon.com</a></p>
<p>Carolyn S. Schwartz United States Trustee, Region 2 33 Whitehall St., 21<sup>st</sup> Floor New York, NY 10004 (212) 510-0500 (212) 668-2255 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Andrew Fastow:</p> <p>Craig Smyser Smyser Kaplan &amp; Veselka, L.L.P. 700 Louisiana, Suite 2300 Houston, TX 77002 (713) 221-2300 (713) 221-2320 (fax)</p> <p>Service by e-mail: <a href="mailto:enronservice@skv.com">enronservice@skv.com</a></p>

Attorneys for Defendants Arthur Anderson LLP, C.E. Andrews, Dorsey L. Baskin, Michael L. Bennett, Joseph F. Berardino, Donald Dreyfus, James A. Friedlieb, Gary B. Goolsby, Gregory W. Hale, Gregory J. Jonas, Robert G. Kutsenda, Benjamin S. Neuhausen, Richard R. Petersen, Danny D. Rudloff, Steve M. Samek, John E. Sorrells, John E. Stewart, and William E. Swanson

Russell (Rusty) Hardin, Jr.  
Andrew Ramzel  
Rusty Hardin & Associates, P.C.  
1201 Louisiana, Suite 3300  
Houston, TX 77002  
(713) 652-9000  
(713) 652-9800 (fax)

Service by e-mail:  
[aramzel@rustyhardin.com](mailto:aramzel@rustyhardin.com)

Attorneys for Defendants Arthur Andersen LLP, Dorsey L. Baskin, Michael L. Bennett, Joseph F. Berardino, Donald Dreyfus, James A. Friedlieb, Gary B. Goolsby, Gregory W. Hale, Gregory J. Jonas, Robert G. Kutsenda, Benjamin S. Neuhausen, Richard R. Petersen, Danny D. Rudloff, Steve M. Samek, John E. Sorrells, John E. Stewart, and William E. Swanson

Sharon Katz  
[sharon.katz@dpw.com](mailto:sharon.katz@dpw.com)  
Daniel F. Kolb  
Michael P. Carroll  
Timothy P. Harkness  
Davis, Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017  
(212) 450-4000  
(212) 450-5649 (fax)  
(212) 450-3633 (fax for service of papers)

Service by e-mail:  
[andersen.courtpapers@dpw.com](mailto:andersen.courtpapers@dpw.com)

Attorneys for Defendants Banc of America Securities LLC and Salomon Smith Barney Inc.:

Paul Vizcarrondo, Jr.  
Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
(212) 403-1000  
(212) 403-2000 (fax)

Service by e-mail:  
[pvizcarrondo@wlrk.com](mailto:pvizcarrondo@wlrk.com)

Attorneys for Defendant Andersen Worldwide, S.C.:

William Edward Matthews  
Gardere Wynne Sewell LLP  
1000 Louisiana, Suite 3400  
Houston, TX 77002  
(713) 276-5500  
(713) 276-5555 (fax)

Service by fax

<p>Attorneys for Defendants Vinson &amp; Elkins, L.L.P., Ronald T. Astin, Joseph Dilg, Michael P. Finch, Max Hendrick, III:</p> <p>John K. Villa Williams &amp; Connolly, LLP 725 Twelfth Street, N.W. Washington, DC 20005 (202) 434-5000 (202) 434-5029 (fax)</p> <p>Service by e-mail: <a href="mailto:jvilla@wc.com">jvilla@wc.com</a></p>	<p>Attorneys for Defendant Citigroup, Inc. and Salomon Smith Barney, Inc.:</p> <p>Jacalyn D. Scott Wilshire Scott &amp; Dyer P.C. 3000 One Houston Center 1221 McKinney Houston, TX 77010 (713) 651-1221 (713) 651-0020 (fax)</p> <p>Service by e-mail: <a href="mailto:jscott@wsd-law.com">jscott@wsd-law.com</a></p>
<p>Attorneys for Defendant David B. Duncan:</p> <p>Barry G. Flynn Law Offices of Barry G. Flynn, PC 1300 Post Oak Blvd., Suite 750 Houston, TX 77056 (713) 840-7474 (713) 840-0311 (fax)</p> <p>Service by e-mail: <a href="mailto:bgflaw@mywavenet.com">bgflaw@mywavenet.com</a></p>	<p>Attorneys for Defendant LJM2 Coinvestments, LP:</p> <p>Mark A. Glasser Reginald R. Smith King &amp; Spalding 1100 Louisiana, Suite 4000 Houston, TX 77002-5213 (713) 751-3200 (713) 751-3290 (fax)</p> <p>Service by e-mail: <a href="mailto:mkglasser@kslaw.com">mkglasser@kslaw.com</a></p>
<p>Attorneys for Defendant Ben F. Glisan, Jr.:</p> <p>Tom P. Allen McDaniel &amp; Allen, APC 1001 McKinney Street, 21<sup>st</sup> Floor Houston, TX 77002 (713) 227-5001 (713) 227-8750 (fax)</p> <p>Service by e-mail: <a href="mailto:tallen@mcdanielallen.com">tallen@mcdanielallen.com</a></p>	<p>Attorneys for Defendant Kristina Mordaunt:</p> <p>Robert Hayden Burns Burns Wooley &amp; Marseglia 1415 Louisiana, Suite 3300 Houston, TX 77002 (713) 651-0422 (713) 651-0817 (fax)</p> <p>Service by e-mail: <a href="mailto:hburns@bwmzlaw.com">hburns@bwmzlaw.com</a></p>

<p>Attorneys for Defendant Michael C. Odom:</p> <p>Bernard V. Preziosi, Jr.  Curtis, Mallet-Prevost, Colt &amp; Mosle, L.L.P.  101 Park Avenue  New York, NY 10178-0061  (212) 696-6000  (212) 697-1559 (fax)</p> <p>Service by e-mail:  <a href="mailto:bpreziosi@cm-p.com">bpreziosi@cm-p.com</a></p>	<p>Attorneys for Defendant Kirkland &amp; Ellis:</p> <p>Kevin S. Allred  Kelly M. Klaus  Munger, Tolles &amp; Olson  355 South Grand Avenue, 35<sup>th</sup> Floor  Los Angeles, CA 90071  (213) 683-9100  (213) 687-3702 (fax)</p> <p>Service by e-mail:  <a href="mailto:allredks@mto.com">allredks@mto.com</a></p>
<p>Attorneys for Defendant D. Stephen Goddard, Jr.:</p> <p>Michael D. Warden  Sidley Austin Brown &amp; Wood, LLP  1501 K Street, N.W.  Washington, DC 20005  (202) 736-8000  (202) 736-8711 (fax)</p> <p>Service by e-mail:  <a href="mailto:mwarden@sidley.com">mwarden@sidley.com</a></p>	<p>Roman W. McAlindan  The Sharrow  34 Lickey Square  Barnt Green, Rednal,  Birmingham, B45 8HB  Great Britain</p> <p>Service by Federal Express</p>
<p>Attorneys for Defendant Thomas H. Bauer:</p> <p>Scott B. Schreiber  Arnold &amp; Porter  555 Twelfth Street, N.W.  Washington, DC 20004-1206  (202) 942-5000  (202) 942-5999 (fax)</p> <p>Service by e-mail:  <a href="mailto:enroncourtpapers@aporter.com">enroncourtpapers@aporter.com</a></p>	<p>Attorneys for Defendant Nancy Temple:</p> <p>Mark C. Hansen  Reid M. Figel  Kellogg, Huber, Hansen, Todd &amp; Evans,  P.L.L.C.  1615 M Street, N.W., Suite 400  Washington, DC 20036  (202) 326-7900  (202) 326-7999 (fax)</p> <p>Service by e-mail:  <a href="mailto:mhansen@khte.com">mhansen@khte.com</a>  <a href="mailto:rfigel@khte.com">rfigel@khte.com</a></p>

<p><b>Attorneys for Defendant Alliance Capital Management:</b></p> <p>Ronald E. Cook  Cook &amp; Roach, LLP  Chevron Texaco Heritage Plaza  1111 Bagby, Suite 2650  Houston, TX 77002  (713) 652-2031  (713) 652-2029 (fax)</p> <p>Service by e-mail:  <a href="mailto:rcook@cookroach.com">rcook@cookroach.com</a></p>	<p><b>Attorneys for American National Plaintiffs:</b></p> <p>Andrew J. Mytelka  David Le Blanc  Greer, Herz &amp; Adams, L.L.P.  One Moody Plaza, 18<sup>th</sup> Floor  Galveston, TX 77550  (409) 797-3200  (409) 766-6424 (fax)</p> <p>Service by e-mail:  <a href="mailto:amytelka@greerherz.com">amytelka@greerherz.com</a>  <a href="mailto:dleblanc@greerherz.com">dleblanc@greerherz.com</a>  <a href="mailto:bnew@greerherz.com">bnew@greerherz.com</a>  <a href="mailto:swindsor@greerherz.com">swindsor@greerherz.com</a></p>
<p><b>Attorneys for Defendant Lou L. Pai:</b></p> <p>Murray Fogler  McDade Fogler Maines, L.L.P.  Two Houston Center  909 Fannin Suite 1200  Houston, Texas 77010-1006  (713) 654-4300  (713) 654-4343 (fax)</p> <p>Service by fax</p>	<p><b>Attorneys for Defendant Lou L. Pai:</b></p> <p>Roger E. Zuckerman  Steven M. Salky  Deborah J. Jeffrey  1201 Connecticut Avenue, N.W.  Washington, D.C. 20036-2638  (202) 778-1800  (202) 822-8106 (fax)</p> <p>Service by e-mail:  <a href="mailto:djeffrey@zuckerman.com">djeffrey@zuckerman.com</a></p>
<p><b>Philip A. Randall</b>  Andersen United Kingdom  180 Strand  London WC2R 1BL  England  44 20 7438 3000  44 20 7831 1133 (fax)</p> <p>Service by fax</p>	<p><b>Attorneys for Defendant Deutsche Bank AG:</b></p> <p>Lawrence Byrne  Owen C. Pell  Lance Croffoot-Suede  White &amp; Case, LLP  1155 Avenue of the Americas  New York, New York 10036-2787  (212) 819-8200</p> <p>Service by e-mail  <a href="mailto:lbyrne@whitecase.com">lbyrne@whitecase.com</a></p>

<p>Attorneys for Defendant Bank of America Corporation:</p> <p>Paul Bessette  Brobeck, Phleger &amp; Harrison, LLP  4801 Plaza on the Lake  Austin, Texas 78746  (512) 330-4000  (512) 330-4001 (fax)</p> <p>Service by e-mail:  <a href="mailto:pbessette@brobeck.com">pbessette@brobeck.com</a></p>	<p>Attorneys for Defendant Bank of America Corp.:</p> <p>Gregory A. Markel  Ronit Setton  Nancy Ruskin  Brobeck, Phleger &amp; Harrison LLP  1633 Broadway, 47<sup>th</sup> Floor  New York, NY 10019  (212) 581-1600  (212) 586-7878 (fax)</p> <p>Service by e-mail:  <a href="mailto:gmarkel@brobeck.com">gmarkel@brobeck.com</a>  <a href="mailto:rsetton@brobeck.com">rsetton@brobeck.com</a>  <a href="mailto:nruskin@brobeck.com">nruskin@brobeck.com</a></p>
<p>Michael D. Jones  Andersen United Kingdom  180 Strand  London WC2R 1BL  England  44 20 7438 3000  44 20 7831 1133 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Alliance Capital Management:</p> <p>Mark A. Kirsch  James F. Moyle  James N. Benedict  Clifford Chance Rogers &amp; Wells  200 Park Avenue, Suite 5200  New York, NY 10166  (212) 878-8000  (212) 878-8375 (fax)</p> <p>Service by e-mail:  <a href="mailto:james.moyle@cliffordchance.com">james.moyle@cliffordchance.com</a>  <a href="mailto:james.benedict@cliffordchance.com">james.benedict@cliffordchance.com</a>  <a href="mailto:mark.kirsch@cliffordchance.com">mark.kirsch@cliffordchance.com</a></p>

<p>Attorneys for Defendant J.P. Morgan Chase &amp; Co.:</p> <p>Richard Mithoff Mithoff &amp; Jacks One Allen Center, Penthouse 500 Dallas Houston, TX 77002 (713) 654-1122 (713) 739-8085 (fax)</p> <p>Service by e-mail: <a href="mailto:enronlitigation@mithoff-jacks.com">enronlitigation@mithoff-jacks.com</a></p>	<p>Attorneys for Defendant J.P. Morgan Case &amp; Co.:</p> <p>Bruce D. Angiolillo Thomas C. Rice Jonathan K. Youngwood Simpson Thacher &amp; Bartlett 425 Lexington Avenue New York, NY 10017-3954 (212) 455-2000 (212) 455-2502 (fax)</p> <p>Service by e-mail: <a href="mailto:bangiolillo@stlaw.com">bangiolillo@stlaw.com</a> <a href="mailto:trice@stblaw.com">trice@stblaw.com</a> <a href="mailto:jyoungwood@stblaw.com">jyoungwood@stblaw.com</a></p>
<p>Attorneys for Defendant Credit Suisse First Boston Corp.:</p> <p>Lawrence D. Finder Haynes and Boone, LLP 1000 Louisiana Street, Suite 4300 Houston, TX 77002-5012 (713) 547-2006 (713) 547-2600 (fax)</p> <p>Service by e-mail: <a href="mailto:finderl@haynesboone.com">finderl@haynesboone.com</a></p>	<p>Attorneys for Defendant Barclays Bank PLC:</p> <p>David H. Braff Sullivan &amp; Cromwell 125 Broad Street New York, NY 10004-2498 (212) 558-4000 (212) 558-3588 (fax)</p> <p>Service by e-mail: <a href="mailto:braffd@sullcrom.com">braffd@sullcrom.com</a> <a href="mailto:candidoa@sullcrom.com">candidoa@sullcrom.com</a> <a href="mailto:brebnera@sullcrom.com">brebnera@sullcrom.com</a></p>
<p>Attorneys for Defendant J.P. Morgan Chase &amp; Co.:</p> <p>Chuck A. Gall James W. Bowen Jenkins &amp; Gilchrist 1445 Ross Avenue, Suite 3200 Dallas, TX 75202-2799 (214) 855-4338 (214) 855-4300 (fax)</p> <p>Service by e-mail: <a href="mailto:cgall@jenkens.com">cgall@jenkens.com</a> <a href="mailto:jbowen@jenkens.com">jbowen@jenkens.com</a></p>	<p>Attorneys for Defendant Credit Suisse First Boston Corp.:</p> <p>Richard W. Clary Julie A. North Cravath, Swaine &amp; Moore 825 Eighth Avenue New York, NY 10019 (212) 474-1000 (212) 474-3700 (fax) <a href="mailto:rclary@cravath.com">rclary@cravath.com</a></p>

<p>Attorneys for Defendant Merrill Lynch &amp; Co., Inc.:</p> <p>Taylor M. Hicks Hicks Thomas &amp; Lilienstern, LLP 700 Louisiana, Suite 1700 Houston, TX 77002 (713) 547-9100 (713) 547-9150 (fax)</p> <p>Service by e-mail: <a href="mailto:thicks@hicks-thomas.com">thicks@hicks-thomas.com</a></p>	<p>Attorneys for Defendant Barclays Bank PLC:</p> <p>Barry Abrams Abrams Scott &amp; Bickley, LLP JP Morgan Chase Tower 600 Travis, Suite 6601 Houston, TX 77002 (713) 228-6601 (713) 228-6605 (fax)</p> <p>Service by e-mail: <a href="mailto:babrams@asbtexas.com">babrams@asbtexas.com</a></p>
<p>John L. Murchison, Jr. Vinson &amp; Elkins, L.L.P. 2300 First City Tower 1001 Fannin Houston, TX 77002 (713) 758-2222 (713) 758-2346 (fax)</p> <p>Service by e-mail: <a href="mailto:jmurchison@velaw.com">jmurchison@velaw.com</a></p>	<p>Attorneys for Defendant Citigroup:</p> <p>Brad S. Karp Mark F. Pomerantz Richard A. Rosen Michael E. Gertzman Claudia L. Hammerman Paul, Weiss, Rifkind, Wharton &amp; Garrison 1285 Avenue of the Americas New York, NY 10019-6064 (212) 373-3000 (212) 757-3990 (fax)</p> <p>Service by e-mail: <a href="mailto:grp-citi-service@paulweiss.com">grp-citi-service@paulweiss.com</a></p>
<p>Andersen LLP (Andersen-Cayman Islands) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Arthur Andersen ( Andersen-United Kingdom) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>
<p>Andersen Co. (Andersen-India) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Lehman Brothers Holding, Inc. c/o Thomas A. Russo 745 Seventh Avenue New York, NY 10019 (212) 526-7000 (212) 526-2628 (fax)</p> <p>Service by fax</p>

<p>Attorneys for Defendant Canadian Imperial Bank of Commerce:</p> <p>Alan N. Salpeter Michele Odorizzi T. Mark McLaughlin Andrew D. Campbell Mayer, Brown, Rowe &amp; Maw 190 South LaSalle St. Chicago, IL 60603 (312) 782-0600 (312) 706-8680 (fax)</p> <p>William H. Knull, III Mayer, Brown, Rowe &amp; Maw 700 Louisiana Street, Suite 3600 Houston, Texas 77002-2730 (713) 221-1651 (713) 224-6410 (fax)</p> <p>Service by e-mail: <a href="mailto:cibc-newby@mayerbrownrowe.com">cibc-newby@mayerbrownrowe.com</a></p>	<p>Arthur Andersen-Puerto Rico (Andersen-Puerto Rico) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>
<p>Arthur Andersen-Brazil 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Attorney for Joseph Sutton:</p> <p>Jack O'Neill Clements, O'Neill, Pierce, Wilson &amp; Peterson 1000 Louisiana, Suite 1800 Houston, Texas 77002 (713) 654-7600 (713) 654-7690</p> <p>Service by e-mail: <a href="mailto:oneilljack@copwf.com">oneilljack@copwf.com</a></p>

<p>Roger D. Willard 3723 Maroneal Street Houston, TX 77025</p> <p>Service by Federal Express</p>	<p>Additional Counsel for Defendant Joseph Hirko:</p> <p>Barnes H. Ellis David H. Angeli STOEL RIVES LLP 900 SW 5th Avenue, Suite 2600 Portland, Oregon 97204 (503) 224-3380 (phone) (503) 220-2480 (fax)</p> <p>Service by e-mail: <a href="mailto:dhangeli@stoel.com">dhangeli@stoel.com</a></p>
<p>Additional Counsel for Kevin Hannon:</p> <p>Stephen J. Crimmins PEPPER HAMILTON LLP Hamilton Square 600 Fourteenth Street, N.W. Washington, D.C. 20005 (202) 220-1200 (202) 220-1665 (Fax)</p> <p>Elizabeth T. Parker PEPPER HAMILTON LLP 3000 Two Logan Square 18th and Arch Streets Philadelphia, PA 19103 (215) 981-4000 (215) 981-4756 (Fax)</p> <p>Service by e-mail: <a href="mailto:crimminss@pepperlaw.com">crimminss@pepperlaw.com</a> <a href="mailto:parkere@pepperlaw.com">parkere@pepperlaw.com</a></p>	<p>Attorneys for Defendants Richard B. Buy, Richard A. Causey, Mark A. Frevert, Stanley C. Horton, Kevin Hannon, Joseph Hirko, Steven Kean, Mark E. Koenig, Michael S. McConnell, Jeffrey McMahon, Cindy K. Olson, Kenneth D. Rice, Paula Rieker, and Lawrence Greg Whalley</p> <p>Jacks C. Nickens Paul D. Flack Nickens, Lawless &amp; Flack 1000 Louisiana, Suite 5360 Houston, Texas 77002 (713) 571-9191 (713) 571-9652 (fax)</p> <p>Service by e-mail <a href="mailto:trichardson@nlf-law.com">trichardson@nlf-law.com</a></p>