

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

United States Courts
Southern District of Texas
ENTERED

JUN 20 2005

Michael N. Milby, Clerk of Court

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IN RE ENRON CORPORATION	:	
SECURITIES LITIGATION	:	MDL Docket No. 1446
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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,	:	<u>CLASS ACTION</u>
v.	:	
ENRON CORP., et al.,	:	
	:	
Defendants.	:	
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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.	:	
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**AGREED STIPULATION AND ORDER RESOLVING LEAD PLAINTIFF'S MOTION
AND REQUEST FOR EXPEDITED CONSIDERATION FOR AN ORDER THAT
CERTAIN BANK DEFENDANTS WAIVE THEIR PURPORTED ADVICE OF
COUNSEL DEFENSE OR PRODUCE DISCOVERY (NO. 3102)**

WHEREAS, on May 20, 2005, Lead Plaintiff The Regents of the University of California ("Lead Plaintiff") filed under seal a Motion for an Order That Certain Bank

Defendants Waive Their Purported Advice of Counsel Defense or Produce Discovery (“Advice-of-Counsel Motion”);

WHEREAS, on May 24, 2005, Credit Suisse First Boston LLC (formerly known as Credit Suisse First Boston Corporation), Credit Suisse First Boston (USA), Inc., Pershing LLC (formerly known as Donaldson, Lufkin & Jenrette Securities Corporation), JPMorgan Chase & Co., J.P. Morgan Securities Inc., JPMorgan Chase Bank, N.A., Canadian Imperial Bank of Commerce, CIBC World Markets Corp. (formerly known as CIBC Oppenheimer Corp.), CIBC World Markets plc, Merrill Lynch & Co., Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively, for purposes of this Stipulation and Order, “Bank Defendants”) filed a Response to Lead Plaintiff’s Motion and Request for Expedited Consideration of Its Motion for an Order That Certain Bank Defendants Waive Their Purported Advice of Counsel Defense Or Produce Discovery;

WHEREAS, by separate orders dated May 24, 2005, the Court granted Lead Plaintiff’s motion to file the Advice-of-Counsel Motion under seal and ordered that all responses to Lead Plaintiff’s request for expedited consideration be filed no later than June 1, 2005;

WHEREAS, on May 26, 2005, the American National, Westboro Properties and Ravenswood/Whitewood Plaintiffs filed Support for Lead Plaintiffs’ Motion for Expedited Consideration; and

WHEREAS, the Bank Defendants have met and conferred with Lead Plaintiff, and the parties wish to resolve the issues raised in the Advice-of-Counsel Motion;

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by and among counsel for the parties herein, and it is hereby ORDERED by the Court that:

1. Each Bank Defendant will advise Lead Plaintiff in writing on or before June 30, 2005, of any aspect of a transaction or subject matter of allegations contained in the

First Amended Consolidated Complaint for Violation of the Securities Laws, filed by Lead Plaintiff on May 14, 2003 (“the Complaint”) for which it intends to assert as a defense reliance on the advice of its own counsel. The subject matters in the Complaint on which each Bank Defendant will advise include but are not limited to allegations made against a Bank Defendant with respect to a particular transaction, creation of or involvement with a special purpose vehicle, and the use of Chinese Walls.

2. In the interest of identifying the universe of transactions or allegations at issue, Lead Plaintiff shall make any requests for clarification within seven business days of receiving written notice from a Bank Defendant of any aspect(s) of a transaction or subject matter of allegations contained in the Complaint for which it intends to assert as a defense reliance on the advice of its own counsel in accordance with Stipulation No. 1. Lead Plaintiff and the Bank Defendants agree to confer promptly on any such request.

3. Each Bank Defendant agrees not to assert as a defense reliance on advice of its own counsel for any aspect of a transaction or subject matter of allegations in the Complaint with respect to which the defense is not asserted in accordance with the above.

4. Each Bank Defendant shall begin production of all communications previously withheld on the basis of attorney-client privilege for which the privilege has been waived through assertion of reliance on advice of its own counsel, on a rolling basis on or before July 15, 2005, with such production to be completed on or before August 15, 2005. The production shall include overnight carrier delivery directly to counsel for Lead Plaintiff of CDs or DVDs containing files of the documents produced. In the event that a Bank Defendant in good faith is unable to complete production on or before August 15, 2005, Lead Plaintiff agrees to engage in good-faith discussions concerning the date by which such production must be completed.

5. Each Bank Defendant intending to assert as a defense reliance on the advice of its own counsel shall supplement in a substantive manner its responses to Lead Plaintiff's interrogatories concerning the advice-of-counsel defense—including (but not limited to) identification of lawyers and law firms whose advice was relied upon, as well as information supplied to and advice received from such lawyers and law firms—on or before July 15, 2005, as set forth below:

a. Interrogatory Nos. 9 and 10 in Lead Plaintiff's First Set of Interrogatories to Defendants Credit Suisse First Boston LLC (formerly known as Credit Suisse First Boston Corporation), Credit Suisse First Boston (USA), Inc., Pershing LLC (formerly known as Donaldson, Lufkin & Jenrette Securities Corporation).

b. Interrogatory Nos. 9 and 10 in Lead Plaintiff's First Set of Interrogatories to Defendants J.P. Morgan Chase & Co., JP Morgan Chase Bank, and JP Morgan Securities Inc.

c. Interrogatory Nos. 9 and 10 in Lead Plaintiff's First Set of Interrogatories to Defendants Merrill Lynch & Co, Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc.

d. Interrogatory Nos. 8 and 9 in Lead Plaintiff's First Set of Interrogatories to Defendants Canadian Imperial Bank of Commerce, CIBC World Markets Corp., CIBC World Markets plc and CIBC Oppenheimer Corp.

By agreeing to supplement their responses to the interrogatories as set forth above, the Bank Defendants do not waive any existing objections or their right to supplement their objections to the interrogatories in question.

6. The Bank Defendants agree that witnesses whose depositions commence on or after June 30, 2005, pursuant to the Deposition Protocol Order entered by the Court on

March 11, 2004 (as subsequently amended), shall be subject to questioning concerning advice of counsel on any transaction for which a Bank Defendant has indicated, in accordance with the above, its intention to rely on advice of its own counsel as a defense. The Bank Defendants agree not to instruct these witnesses not to answer on the basis of privilege, to the extent privilege has been waived in accordance with the above.

7. In view of the foregoing, Lead Plaintiff hereby withdraws its Advice-of-Counsel Motion without prejudice to refiling.

Dated: June 17, 2005

Respectfully submitted,

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SIGNED at Houston, Texas this th 17 day of June, 2005.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE