

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

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

MAY 25 2004

Michael N. Milby, Clerk of Court

UNITED STATES COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

ENRON CORP.,

Defendant.

Docket No. H-03-909

Hon. Melinda Harmon

United States Courts  
Southern District of Texas  
ENTERED

MAY 28 2004

Michael N. Milby, Clerk of Court

**CONSENT ORDER OF PERMANENT INJUNCTION  
AND OTHER RELIEF AGAINST DEFENDANT ENRON CORP.**

On March 12, 2003, Plaintiff Commodity Futures Trading Commission (the "Commission") filed a three-count Complaint against Enron Corp. ("Enron") and Hunter Shively ("Shively") seeking a civil monetary penalty, and injunctive and other relief for violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2000), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

I.

**CONSENT AND AGREEMENT**

In order to dispose of all the allegations and issues raised in the Complaint and effect a full and final settlement of any alleged violations of the above-referenced laws or regulations without a trial on the merits or any further judicial proceedings, Enron, without admitting or denying any of the allegations of the Complaint:

A. Consents to the entry of this Consent Order of Permanent Injunction and Other Relief Against Defendant Enron Corp. ("Order");<sup>1</sup>

<sup>1</sup> Enron has obtained prior approval from the United States Bankruptcy Court for the Southern District of New York to enter into this Consent Order. Bankruptcy Case No. 01-16034 (AJG), order entered at Docket No. \_\_\_ (the "Authorization Order"). The terms of the allowance, treatment and classification of the civil monetary penalty

B. Affirms that Enron has agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein;

C. Acknowledges service of the Summons and Complaint and this Order;

D. Admits jurisdiction of this Court over it and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

E. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

F. Waives:

1. all claims which it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63;
2. any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
3. all rights of appeal from this Order.

## II.

### **TERMS OF ORDER**

For purposes of settling this proceeding only, and without Enron admitting or denying any of the allegations in the Complaint, the parties consent to the entry of an order by this Court as follows:

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provided for in paragraph C of this Consent Order are set forth in, and shall be governed solely by, the Authorization Order.

## ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

A. Enron is permanently restrained, enjoined and prohibited from directly or indirectly:

1. manipulating or attempting to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2);

2. violating Section 4(a) of the Act, 7 U.S.C. § 6(a), by offering to enter into, entering into, executing, confirming the execution of any transaction in, or conducting any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any funds from any person in connection with a contract for purchase or sale of a commodity for future delivery (other than a contract made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories, or possessions) unless:

a) such transaction is conducted on or subject to the rules of a board of trade which the Commission has designated "a contract market;"

b) such contract is executed or consummated by or through a member of such contract market; and

c) such contract is evidenced by a written record showing the date, the parties to the contract and their addresses, the property covered and its price, and the delivery terms.

B. Enron shall comply with its undertaking to cooperate fully with the Commission in this proceeding and in any investigation, litigation or any proceeding commenced by the Commission related to this proceeding by, among other things: a) responding promptly, completely, and truthfully to any inquiries or requests for information; b) authenticating documents; c) testifying completely and truthfully; and d) not asserting its attorney-client and attorney work product privileges with respect to relevant privileged documents and other communications made on or before December 2, 2001, except that Enron will maintain the attorney-client and attorney work product privileges as to (i) documents containing

communications with counsel or among counsel, or involving work product of counsel, relating to discussions or handling of government and congressional investigations; and (ii) documents containing communications with counsel or among counsel, or involving work product of counsel, relating to discussions or handling of litigation.

IT IS FURTHER ORDERED THAT:

C. A civil monetary penalty of \$35 million is hereby imposed on Enron.

### III.

#### MISCELLANEOUS PROVISIONS

A. AMENDMENTS AND SEVERABILITY. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (i) reduced in writing, (ii) signed by all parties, and (iii) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

B. PUBLIC STATEMENTS. By consenting to the entry of this Order, Enron agrees that neither it nor any of its agents or employees under its authority and control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or creating, or tending to create the impression that the Complaint and Order are without a factual basis; provided, however, that nothing in this provision shall affect Enron's: (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. Enron shall take all steps necessary to ensure its agents and employees comply with this provision.

C. SUCCESSORS AND ASSIGNS. This Order shall be binding on Enron and any Enron company which is presently a debtor-in-possession participating in Bankruptcy Case No. 01-16034 (AJG) before the United States Bankruptcy Court, Southern District of New York.

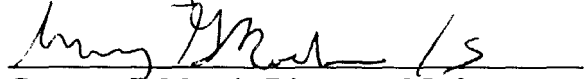
D. JURISDICTION. This Court shall retain jurisdiction of this matter to ensure compliance with this Order and for all other purposes related to this action, provided, however, that nothing in this Order affects the exclusive jurisdiction of the Bankruptcy Court, Southern District of New York, with respect to matters related to the administration of the Enron bankruptcy estate, including determination of the priority of distribution on any claims, as defined in section 101(5) of the Bankruptcy Code, arising from this Order.

E. INADMISSIBLE IN OTHER PROCEEDINGS. Except with respect to a proceeding brought by the Commission, this Order is for purposes of this proceeding only and shall not be admissible as evidence in any form or for any purpose in any judicial or administrative proceeding other than to enforce its terms; provided that Enron does not consent to the use of this Order as the sole basis for any proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order and provided further that, nothing in this Order shall be construed to confer any rights on any third parties or inure to the benefit of any third parties.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Relief Against Defendant Enron Corp.

CONSENTED TO BY:

Dated: May 21, 2004

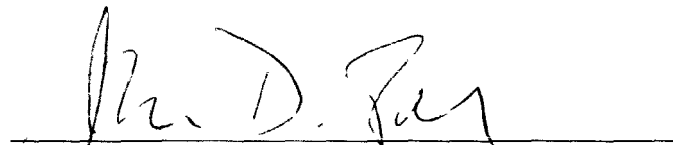


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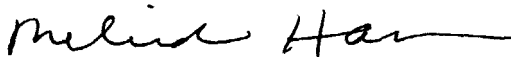
Dated: 5/24/04



Jonathan D. Polkes  
Attorney-in-charge  
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100 Maiden Lane  
New York, NY 10038  
(212) 504-6021  
Fax: (212) 504-6666

On behalf of Defendant Enron Corp.

Done and Ordered this <sup>r</sup>27 day of May, 2004.



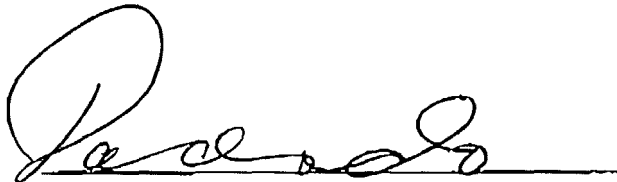
HON. MELINDA HARMON  
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2004, I served a copy of the CFTC's and Enron's  
**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER RELIEF  
AGAINST DEFENDANT ENRON CORP.** via U.S. Mail and facsimile on all parties  
or their counsel of record below:

Lisa A. Dunsky, Esq.  
Mayer, Brown, Rowe & Maw  
190 S. LaSalle Street  
Chicago, IL 60603  
Counsel for Hunter Shively

(312) 706-8626

A handwritten signature in black ink, appearing to read "David Acevedo", written over a horizontal line.

David Acevedo

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

<hr/>		X
<b>In re</b>	:	<b>Chapter 11</b>
<b>ENRON CORP., et al.,</b>	:	<b>Case No. 01-16034 (AJG)</b>
	:	<b>Jointly Administered</b>
<b>Debtors.</b>	:	
<hr/>		X

**ORDER PURSUANT TO SECTIONS 105(a), 502 AND 726(a)(4) OF  
THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019  
(A) AUTHORIZING AND APPROVING THE SETTLEMENT OF  
LITIGATION BETWEEN ENRON CORP. AND THE COMMODITY  
FUTURES TRADING COMMISSION AND (B) ALLOWING CLAIM**

Upon consideration of the motion, dated April 28, 2004 (the "Motion"), of Enron Corp. ("Enron") as debtor and debtor in possession for an order, pursuant to sections 105(a), 502, and 726(a)(4) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, (a) authorizing and approving the settlement of litigation brought by the Commodity Futures Trading Commission ("Commission") and (b) allowing claim; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and due notice of the Motion and the hearing to be held thereon having been served on all parties entitled thereto in accordance with the Bankruptcy Rules and this Court's Second Amended Case Management Order, and no other or further notice need be given; and a hearing having been held before this Court; and it appearing that the relief requested in the Motion is in the best interest of Enron and its affiliate debtor subsidiaries (collectively with Enron, the "Debtors"), their estates and creditors; and upon the proceedings before the Court, it appearing that the relief requested in the Motion is in the best interest of the Debtors, their estates, and their creditors; and good and sufficient cause appearing therefor,



IT IS HEREBY ORDERED THAT;

1. The Motion is granted.
2. All objections, if any, to the Motion or the relief requested therein or granted in this Order, that have not been withdrawn, waived or settled, and all reservations of rights included therein, are overruled.
3. Enron is authorized to settle the claims and causes of action asserted by the Commission against Enron in the case entitled *Commodity Futures Trading Commission v. Enron Corp. et al.*, Case No. 03-909, pending in the United States District Court for the Southern District of Texas, Houston Division (Harmon, J.) (the “CFTC Litigation”), on the terms and conditions set forth herein and in the Consent Order of Permanent Injunction and Other Relief Against Defendant Enron Corp. (the “Consent Order”), a copy of which is attached hereto as Exhibit A, and such settlement is approved pursuant to sections 105(a), 502, and 726(a)(4) of the Bankruptcy Code and Bankruptcy Rule 9019.
4. Enron is authorized to seek court approval of the Consent Order in the CFTC Litigation, and upon such approval, Enron is authorized to fully perform any and all obligations and to take any and all actions necessary or appropriate under this Order and the Consent Order.
5. Upon the Consent Order becoming a Final Order<sup>1</sup> in the CFTC Litigation, the Commission shall be allowed a claim in accordance with Bankruptcy Code sections 105(a), 502, and 726(a)(4) (the “Commission Claim”) in Enron’s chapter 11 case in the amount of Thirty-Five Million Dollars (\$35,000,000), which claim shall be treated and shall have the same

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the same meaning as defined in the Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code dated January 9, 2004 (the “Plan”).

priority for distribution in these cases as a fine, penalty or forfeiture under Bankruptcy Code section 726(a)(4), and which claim is and shall continue to be treated as follows: (a) defined as a Penalty Claim pursuant to Section 1.180 of the Plan, (b) classified in Class 380 (Penalty Claim) of the Plan, (c) treated pursuant to the provisions of Sections 17.1 and 17.2 of the Plan, and (d) entitled to distributions only upon satisfaction of all senior classes of claims in accordance with the terms of the Plan.

6. The allowance, classification, priority, and treatment of the Commission Claim shall be governed solely by the terms of this Order, and no party in interest may seek to contest, alter, amend, or otherwise modify the classification, priority, or treatment of the Commission Claim.

7. Enron may not seek to amend or modify the terms of the Consent Order unless agreed to, in writing, by the Creditors' Committee.

8. Upon the Consent Order becoming a Final Order, the Commission's Motion to Extend Time to File Late Claim (Docket No. 11056) shall be rendered moot and shall be deemed automatically withdrawn with prejudice.

9. This Court shall have exclusive jurisdiction with respect to matters relating to the administration of Enron's chapter 11 case, including determining the priority of distribution on any claims, as defined in section 101(5) of the Bankruptcy Code, arising from the Consent Order.

10. This Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the construction, performance and enforcement of the terms of this Order.

11. The terms of this Order shall have no force or effect if the Consent Order is not entered in the CFTC Litigation.

Dated: New York, New York  
May 13, 2004

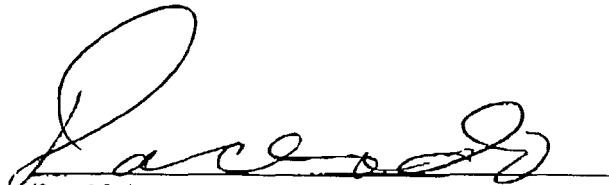
*s/ Arthur J. Gonzalez*  
HONORABLE ARTHUR J. GONZALEZ  
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2004, I served a copy of the CFTC's and Enron's  
**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER RELIEF  
AGAINST DEFENDANT ENRON CORP.** via U.S. Mail and facsimile on all parties  
or their counsel of record below:

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David Acevedo