Enron Complaint

of the firm, invested $22.5 million in equity money to facilitate the financing of that critical vehicle using DLJ Fund Investing Trust Partners and Merchant Capital, thus receiving a reward for engaging in the scheme. They ***put their money up early*** in 12/99 so LJM2 would have the cash to fund four SPEs to do deals with Enron prior to year-end 99 to create huge profits for Enron so it could meet its 99 profit forecasts. CS First Boston also was a major lender to LJM2 via a $120+ million credit line providing financing LJM2 needed to engage in its transactions with SPEs and Enron in order to falsify Enron's results.

713. CS First Boston knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its unlimited access to Enron's internal business and financial information as Enron's lead lending bank, as well as its intimate interaction with Enron's top officials which occurred on a virtually daily basis.

714. Thus, CS First Boston is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and CS First Boston to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by CS First Boston, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in manipulative devices, a fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

E. Involvement of CIBC

715. CIBC is a financial institution that had an extensive and extremely close relationship with Enron. During the Class Period, CIBC provided both commercial banking and investment banking services to Enron and helped structure and/or financed one or more of Enron's illicit

partnerships or SPEs, and helped Enron falsify its financial statements and misrepresented its financial condition while its securities analysts were issuing extremely positive reports on Enron extolling its business success, the strength of its financial condition and its prospects for strong revenue and earnings growth. In return for CIBC's participation in the scheme, CIBC or its top executives were rewarded by being permitted to invest at least $15 million in the lucrative LJM2 partnership.

716. CIBC's relationships with Enron were so extensive that these individuals constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships and SPEs and Enron's future prospects. CIBC actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business in several ways. It participated in loans of over $3 billion to Enron during the Class Period. It helped Enron (or entities Enron controlled) raise over $3 billion from the investing public via the sale of securities during the Class Period. It helped Enron structure and finance certain of the illicit SPEs and partnerships Enron controlled which were a primary vehicle utilized by Enron to falsify its reported financial results and engaged in manipulative devices with Enron that helped Enron falsify its reported earnings at least in the 4thQ 00 and 1stQ 01.

717. In interacting with Enron, CIBC functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off CIBC securities analysts from information which the commercial and investment banking parts of CIBC obtained in the course of rendering their commercial and investment banking services to Enron. Alternatively, even if some restrictions were placed on the information made available to CIBC's securities analysts, that unilateral and self-serving action is insufficient to prevent the imputation of all knowledge (and scienter) possessed by

the CIBC legal entity, as its knowledge and liability in this case is determined by looking at CIBC as an overall legal entity.

718. CIBC acted as an underwriter for Enron. For instance:

DATE	SECURITY
11/93	8 million shares of 8% Enron capital preferred shares at $25 per share
7/94	3 million shares of 9% Enron capital preferred shares at $25 per share
1/97	6 million shares of 8-1/8% Enron capital preferred shares at $25 per share
5/98	35 million shares Enron common stock at $25
2/99	27.6 million shares of Enron common stock at $31.34
5/99	$500 million 7.375% Enron notes

719. During the Class Period, CIBC was one of the principal commercial lending banks to Enron. For instance:

DATE	TRANSACTION
11/97	$250 million credit facility for Enron
7/98	$250 million loan to an Enron subsidiary guaranteed by Enron
9/98	$1 billion committed credit facility for Enron to back up commercial paper
8/01	$3 billion committed credit facility for Enron to back up commercial paper

720. In 7/01, CIBC also acted as an underwriter of certain Enron-related securities, *i.e.*, Marlin Water Trust II, Marlin Water Capital Corp. II $475,000,000 6.31% Senior Secured Notes; and ¡ 515,000,000 6.19% Senior Secured Notes.

721. CIBC also acted as a lead underwriter in the New Power IPO on 10/4/00, selling 27.6 million shares at $21. By creating a trading market for New Power stock and a purported value for

that stock, CIBC enabled Enron to then record a huge profit on the gain in value of the 80 million New Power shares Enron continued to hold, via a bogus hedge transaction with an SPE controlled by the LJM2 partnership as detailed elsewhere herein.

722. CIBC was willing to engage and participate in the ongoing fraudulent scheme because such participation created enormous profits for CIBC as long as the Enron scheme could be continued in operation – something that CIBC was in a unique position to help occur. While CIBC was lending hundreds of millions to Enron and syndicating hundreds of millions of dollars of additional loans, it was receiving huge fees and interest payments for those loans and syndication services. However, CIBC was limiting its risk in this regard as it knew that either with its help or the help of other banks which were part of the scheme, so long as Enron maintained its investment grade credit rating and continued to report strong current period financial results and credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to raise hundreds of millions, if not billions, of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from CIBC to Enron so that the process could continue. In fact, the proceeds of the securities offerings which Enron did during the Class Period, including those CIBC helped underwrite, were utilized in significant part to repay Enron's existing commercial paper and bank indebtedness, including indebtedness to CIBC. Thus, throughout the Class Period, CIBC was pocketing millions of dollars a year in interest payments, syndication fees and investment banking fees by participating in the Enron scheme to defraud and stood to continue to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme.

723. CIBC also actively participated in the scheme to defraud by additional actions set forth below. First of all, in the Registration Statements and Prospectuses for the Enron securities

sales where CIBC was one of the underwriters, those Registration Statements and Prospectuses contained false and misleading statements – ***which are statements made by CIBC as an underwriter*** – including false interim and annual financial statements, and false statements concerning the structure of and Enron's relationship to special purpose entities and related parties, as well as the value and condition of Enron's business operations, as detailed herein. CIBC is liable under §11 for its participation in the following offering as a lead underwriter:

5/99	$500 million 7-3/8% Enron notes

724. In addition, throughout the Class Period, CIBC ***issued*** analysts' reports on Enron which contained false and misleading statements concerning Enron's business, finances and financial condition and its future prospects, including, but not limited to, those dated 7/15/98, 10/14/98, 1/25/99, 4/14/99, 7/14/99, 10/7/99, 10/13/99, 1/6/00, 1/18/00, 1/21/00, 4/12/00, 10/19/00, 4/19/01, 8/15/01 and 10/17/01, as pleaded herein. These were all statements of CIBC to securities markets which helped artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was important to CIBC as it knew that if the stock price fell below various "trigger" prices, Enron would be required to issue millions of additional Enron shares which would reduce Enron's shareholder's equity by hundreds of millions if not billions of dollars, endangering its investment-grade credit rating, cutting off its access to the capital markets and thus endangering the scheme.

725. In addition to its own direct liability for making false and misleading statements, CIBC also engaged and participated in and furthered the fraudulent scheme by helping to finance or otherwise participate in illicit transactions with Enron which it knew would contribute materially to Enron's ability to continue to falsify its financial condition and thus continue the operation of the Enron Ponzi scheme. CIBC and Enron engaged in fraudulent transactions utilizing an entity which

CIBC and Enron controlled, known as Project Braveheart, a partnership which related to Enron's VOD joint venture with Blockbuster and enabled Enron to improperly report over $110 million in phony profits in the 4thQ 00 and the 1stQ 01.

726. When Enron announced its VOD joint venture with Blockbuster in 7/00, and as it and CIBC described that venture in following months, they were extraordinarily positive about it, assuring investors the Blockbuster VOD venture was a first of its kind, that it validated Enron's broadband content delivery technology and was worth more than $1 billion to Enron. They also extolled the high quality of the EIN, *i.e.*, Enron's fiber optic system.

727. However, behind the scenes Enron and CIBC knew that the VOD project was very risky and was plagued by technical and legal problems that made it likely that it would never advance past a pilot project stage – at least not for a long time. Nevertheless, they worked together so Enron could misuse mark-to-market accounting to improperly accelerate and record over $100 million of profit from the Blockbuster joint venture in current periods, *i.e.*, year-end 00 and the 1stQ of 01, when Enron desperately needed to create profits to cover the true adverse condition of its business. Thus, on 12/28/00, CIBC and Enron formed a partnership – EBS Content Systems LLC - known as project Braveheart. Enron and CIBC assigned an arbitrary and unrealistic value of $124 million to the partnership and CIBC agreed to ***invest*** (not loan) $115 million in the partnership in return for a large up-front fee and the right to receive 93% of Enron's profits from the VOD joint venture over the next 20 years. This enabled Enron to recognize $110 million in profits from this transaction in the 4thQ of 00 and 1stQ of 01.

728. However, this profit recognition was fraudulent as the VOD joint venture was nothing more than a pilot project, and one that was failing at that. The CIBC/Enron partnership was a phony contrivance, as ***Enron had secretly guaranteed CIBC's investment in Braveheart so that CIBC was***

not a true investor and was not at risk. CIBC demanded and got its guarantee because it knew that the VOD venture was very troubled and unlikely to succeed and entered into the transaction as an accommodation to Enron to allow Enron to create and report phony profits to falsify its financial condition. To attempt to create the 3% outside equity investor participation necessary to create a "legitimate" SPE, Enron and CIBC got a company called nCUBE (a contractor for Enron on the VOD project) to put $2 million into Braveheart at year-end 00. However, Enron and CIBC secretly promised to return that $2 million right after year-end 00. Creating these phony profits was indispensable to allowing Enron to publicly stress the success of Enron's new Broadband content delivery business. However, in reality the VOD partnership was an illusion. Enron's technology did not work – it could not deliver the content over its fiber optic network and the test of the system in late 00 was a catastrophic failure. Blockbuster also did not have and could not obtain the legal right to provide the VOD venture content (movies) in digital form because it had not acquired and could not acquire those rights from the movie studios. The VOD venture was abandoned in 3/01 by Enron less than eight months after it started – but Enron ***did not at that time reverse*** the over $110 million in phony profits it had recorded. And because CIBC knew Enron's financial condition was such that it could not honor its secret guarantee to repay CIBC its $115 million investment in Braveheart, CIBC agreed to carry that amount for Enron until later so as to permit the Enron Ponzi scheme to continue.

729. *The Wall Street Journal* has reported on this bogus transaction as set forth below:

A Blockbuster Deal
Shows How Enron
Overplayed Its Hand

Company Booked Big Profit
From Pilot Video Project
That Soon Fizzled Out

"I Just Couldn't Believe It"

When Enron Corp-. and Blockbuster Inc. joined forces in mid-2000, it looked like they were onto something big. The companies announced they would soon be allowing consumers across America to choose from among thousands of movies, including hot new features, sent via ***telephone lines to watch on their TVs at home***.

Announcing the partnership in July 2000, Enron Chairman Kenneth Lay called it the "***killer app for the entertainment industry***."...

It looked like another brilliant move by Enron, already a hero on Wall Street. The Houston company had aligned itself with the nation's leading video retailer. the 20-year deal would ***bring traffic to Enron's fledgling fiber-optic telecommunications network***. And the venture reaffirmed the notion that Enron, already America's preeminent energy trader, would soon be a lucrative middleman for a vast range of other products, as well.

* * *

Enron ... set up an affiliated partnership, code-named Project Braveheart .... Enron obtained a $115.2 million investment in the partnership from ***CIBC World Markets***, the investment-banking arm of Canadian International Bank of Commerce in Toronto. In return, CIBC received a promise of almost all earnings from Enron's share of the venture ....

The partnership had no separate staff and no assets other than Enron's stake in the venture with Blockbuster, which was barely getting off the ground in late 2000. Still, in an audacious accounting move, ***Enron claimed $110.9*** million in profits from Braveheart in the fourth quarter of 2000 and the first quarter of 2001. That amount sharply limited the overall losses suffered by Enron's ***young broadband-services division in the two periods***.

* * *

"It was nothing but a pilot project," says Blockbuster's Ms. Raskopf. "I don't know how anyone could have been booking revenues." Blockbuster ... never accounted for any financial gain or loss from the short-lived venture, she says.

Project Braveheart was one of dozens of outside partnerships that Enron officials created to burnish the company's financial results at a time when it felt under pressure to show high profit that would justify its soaring stock price, according to current and former company executives....

Enron's current chief financial officer, Jeffrey McMahon, says he had nothing to do with Braveheart or related partnerships. "I'm not going to defend them," he says.

* * *

In exchange for its $115.2 million investment, CIBC was supposed to receive 93% of Braveheart's cash flow for 10 years. ***But Enron made the investment in the embryonic partnership more attractive by promising to repay CIBC the full value of its investment if the partnership failed to be a money maker.***

Three former Enron employees familiar with the partnership deals say that this kind of guarantee was designed specifically to attract investors who otherwise might worry about the viability of the deals. "The banks didn't care about the assets they invested in and that's how it got out of control," says one former Enron employee who helped create some of the partnerships.

* * *

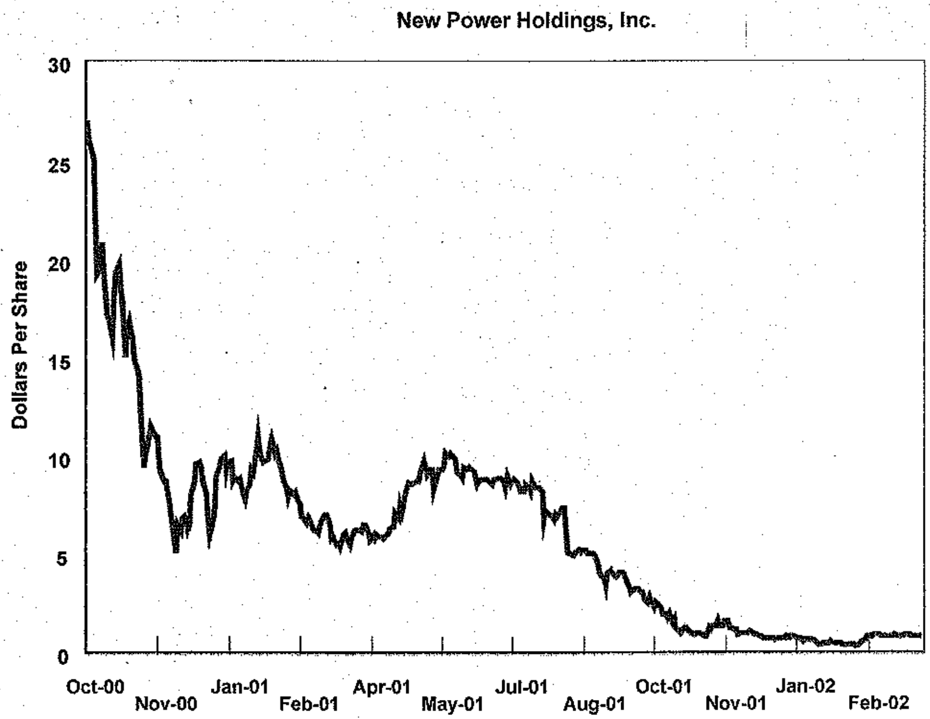
Enron began using Braveheart for accounting purposes in the fourth quarter of 2000. For that period, Enron claimed its ownership of Braveheart resulted in a $53 million profit, even though the Blockbuster venture was only two weeks into its pilot program and not generating any profit at all.

One of the former Enron employees familiar with Braveheart recalls wondering at the time," '***How can they monetize this asset when we're still putting it together?' It didn't make any sense to me.***"

In the following quarter, the first of 2001, Enron claimed an additional $57.9 million gain from Braveheart. ***"I was just floored," says the former employee. "I mean, I couldn't believe it.***"

730. Thus, the active and knowing participation of CIBC in Project Braveheart was an essential part of the scheme and helped artificially inflate Enron's stock to its all time high of $90-3/4 in 8/00.

731. Another example of how CIBC helped falsify Enron's reported results is the New Power transaction, including the New Power IPO, by which Enron improperly recognized $370 million in profits in the 4thQ 00. In 00, Enron controlled and owned millions of shares of New Power stock – then a private company. If Enron could take Enron public, create a trading market in its stock, then Enron could recognize a profit on the gain on its shares by "hedging" that gain via yet another non-arm's-length transaction with a LJM2 entity. In the 4thQ 00, when Enron desperately needed to create profits to perpetuate the Enron Ponzi scheme, Enron and CS First Boston, CitiGroup and CIBC did the huge New Power IPO – 27.6 million shares at $21 per share. Enron continued to hold 13.6 million shares of New Power common stock and warrants to purchase 42 million more shares. Then, together with Vinson & Elkins, Andersen and CIBC, Enron quickly moved to create a huge phony profit using LJM2. Immediately after the New Power IPO, Enron and CIBC created Hawaii 125-0. CIBC (and several other of Enron's banks) made a "loan" of $125 million to Hawaii 125-0, but received a secret "total return swap" guarantee that protected CIBC and the other banks against ***any loss*** from Enron. Enron transferred millions of its New Power warrants to Hawaii 125-0 to "secure" the banks' loan and created a huge $370 million "profit" on the purported gain on the New Power warrants made possible by the New Power IPO. Hawaii 125-0 simultaneously supposedly "hedged" the warrants with another entity created and controlled by Enron called "Porcupine." To supposedly capitalize, LJM2 put $30 million into Porcupine to facilitate the so-called hedge of the New Power warrants, but, one week later, Porcupine paid the $30 million back to LJM2 plus a $9.5 million profit – leaving Porcupine with no assets. During 01, New Power stock fell sharply, as the chart below suggests:



This collapse in New Power's stock turned Enron's huge gain on its New Power stock/warrants into a huge loss early in 01 – a loss of about $250 million – which Enron concealed until 10/01, when Enron shocked the markets by revealing a $600 million loss – which included the reversal of Enron's entire $370 million profit in the New Power transaction.

732. CIBC also actively participated in the Enron fraudulent scheme by helping it structure and finance the critical LJM2 SPE. In this regard, CIBC's top executives were permitted to invest some $15 million in equity money to facilitate the financing of that critical vehicle and ***put their money up early*** – on or about 12/22/99 – so LJM2 would have the cash to fund four SPEs to do deals with Enron at year-end 99 to create huge profits for Enron so it could meet its 99 profit forecasts. LJM2 was an investment that was, as described above, virtually guaranteed to generate huge returns for investors and was really a reward to CIBC for its participation in the scheme.

733. CIBC knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its access to Enron's internal business and financial information as one of Enron's lead lending banks, as well as its intimate interaction with Enron's top officials which occurred virtually on a daily basis.

734. Thus, CIBC is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and CIBC to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by CIBC, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in a fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

F. Involvement of Merrill Lynch

735. Merrill Lynch is a huge financial services firm which had an extensive and extremely close relationship with Enron. During the Class Period it provided investment banking services to Enron, helped structure and finance one or more of Enron's illicit partnerships or SPEs, while its securities analysts were issuing extremely positive reports on Enron extolling its business success, the strength of its financial condition and its prospects for strong future earnings and revenue growth.

736. Merrill Lynch's relationships with Enron were so extensive that top executives of the firm constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships and SPEs and Enron's future prospects. Schyler Tilney was the head of Merrill Lynch's Energy Investment banking operation. Schyler