

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> , Debtors. ¹	PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered)
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**MOTION OF THE INDEPENDENT INVESTIGATOR
FOR AN ORDER: (I) ESTABLISHING PROCEDURES FOR RESOLVING
ANY CONFIDENTIALITY DISPUTE IN CONNECTION WITH PUBLICATION
OF THE INDEPENDENT INVESTIGATOR’S FINAL REPORT; (II) APPROVING
THE DISPOSITION OF DOCUMENTS AND INFORMATION; (III) RELIEVING
THE INDEPENDENT INVESTIGATOR FROM CERTAIN DISCOVERY
OBLIGATIONS; (IV) EXCULPATING THE INDEPENDENT INVESTIGATOR IN
CONNECTION WITH THE INVESTIGATION AND PUBLICATION
OF THE FINAL REPORT; AND (V) GRANTING RELATED RELIEF**

Kobre & Kim LLP, the independent investigator (the “Independent Investigator”) retained by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), acting by and through the Special Investigation Committee of the Oversight Board (the “Special Investigation Committee”),² submits this motion (the “Motion”) for an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), under sections

¹ The debtors in the above referenced cases (the “Title III Cases”), along with each debtor’s respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each debtor’s federal tax identification number, as applicable, are the: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284(LTS)) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); and (iv) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747) (collectively, the “Debtors”).

² The Special Investigation Committee of the Oversight Board comprises of Members Ana J. Matosantos, David A. Skeel, and Judge Arthur J. Gonzalez (Ret.), and is charged with pursuing investigations pursuant to the authority granted to the Oversight Board by PROMESA Section 104(o) and such other authority vested in the Oversight Board under PROMESA.

104(k), (o), (p), 105, 106(a), 306(a), and 307(a) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”),³ sections 105(a), 107(a) and (b) of the Bankruptcy Code,⁴ as incorporated by section 301(a) of PROMESA, Rules 7026(c)(1) and 9018 of the Federal Rules of Bankruptcy Procedure, as incorporated by section 310 of PROMESA, and Rules 502(a), (b), (d), (e), (f) and (g) and 1101 of the Federal Rules of Evidence: (i) establishing procedures for resolving any confidentiality dispute in connection with publication of the Independent Investigator’s final report (the “Final Report”); (ii) approving the disposition of certain documents and information; (iii) relieving the Independent Investigator from certain discovery obligations; (iv) exculpating the Independent Investigator in connection with the Investigation and publication of the Final Report; and (vi) granting related relief. In support of the Motion, the Independent Investigator respectfully states as follows:

PRELIMINARY STATEMENT

1. The Independent Investigator is concluding its Investigation and intends to publish the Final Report, as required by section 104(p) of PROMESA. The Independent Investigator intends to publish the Final Report no later than August 15, 2018. The Investigation has relied upon, and has been made possible by, the voluntary cooperation of more than 150 witnesses and parties in interest—including former and current senior government officials and various financial institutions, rating agencies, financial advisors, professionals, and regulators. Each of the parties that produced documents or shared information with the Independent Investigator (the “Disclosing Parties”) did so with the knowledge that such documents or information might be relied upon by the Independent Investigator in the Final Report.

³ PROMESA has been codified in 48 U.S.C. §§ 2101-2241.

⁴ The Bankruptcy Code is codified in 11 U.S.C. § 101 *et seq.*, and is referred to herein as the Bankruptcy Code.

2. As is typical in an investigation, the Independent Investigator's Final Report will discuss information that has been designated as confidential by certain Disclosing Parties. By filing this Motion, the Independent Investigator seeks judicial assistance in establishing uniform procedures for resolving objections, if any, to the Independent Investigator's publication of confidential information, to the extent discussed in or attached as exhibits to the Independent Investigator's Final Report. Specifically, the procedures will (i) provide Disclosing Parties with advance notice of the planned publication of their confidential information, if required by a non-disclosure agreement, (ii) require those Disclosing Parties to meet and confer with the Independent Investigator to resolve any dispute over the publication of their confidential information, and (iii) if the dispute cannot be resolved consensually, provide Disclosing Parties the opportunity to seek a protective order or similar relief before such information is disclosed. These procedures will assist the Independent Investigator in fulfilling its mandate under PROMESA, while at the same time protecting the rights of Disclosing Parties. By establishing a meet and confer process and funneling any disputes to a single forum, the procedures will also conserve resources.

3. Following the publication of the Final Report, the Independent Investigator intends to transfer various documents in its possession to a centralized document depository for which parties in interest or members of the public may seek access in the future. By this Motion, the Independent Investigator seeks approval of procedures for the transfer, storage, and disposition of materials collected during the Investigation and procedures for access to the centralized document depository.

4. Under section 105 of PROMESA, the Independent Investigator seeks to be exculpated from liability in connection with the Investigation and the Final Report. Consistent with the relief granted to bankruptcy examiners at the conclusion of their engagements, the Independent Investigator also seeks to be relieved from certain discovery

obligations in the future. As set forth more fully below, such relief will help ensure the integrity and independence of the Investigation, which in turn benefits all parties in interest and the public.

5. The relief sought in the Motion is consistent with the Independent Investigator's overall objective to assist the Oversight Board in achieving its mandate under PROMESA in the most effective and efficient way, while maintaining the independence and disinterestedness of the Independent Investigator. Moreover, the relief sought is in the public interest, necessary to enable the Independent Investigator to fulfill its duties and responsibilities under PROMESA, and provides a transparent, cost-effective, and efficient process for concluding the Investigation and publishing the Final Report. For all these reasons and those set forth below, the Independent Investigator respectfully requests approval of the Motion.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter under sections 106(a) and 306(a)(2) of PROMESA. This matter arises out of PROMESA, including: (i) section 104(o), which provides the authority for the Independent Investigator to conduct the Investigation on behalf of the Oversight Board, acting by and through the Special Investigation Committee; (ii) section 104(p), which requires the publication of the findings of any investigation referenced in section 104(o); and (iii) section 104(k), which authorizes the Oversight Board, and thereby the Independent Investigator retained by the Special Investigation Committee, to seek judicial enforcement of its authority to carry out its responsibilities under PROMESA.

7. This matter is "related to" the Debtors' Title III Cases because the Investigation and Final Report may affect the Debtors to the extent the Independent Investigator, among other things, identifies claims or defenses that impact the value of the

Debtors' estates.⁵ In addition, the Investigation has involved an extensive review of documents and information concerning the Debtors, and many of the Disclosing Parties are parties in interest in the Title III Cases. Further, the Investigation is related to numerous matters that have already been addressed by the Honorable United States District Judge Laura Taylor Swain and the Honorable United States Magistrate Judge Judith Gail Dein in the Debtors' Title III Cases. Such matters include the Debtors' ongoing restructuring efforts, the scope of certain claims of privilege and confidentiality asserted by parties in the Title III Cases,⁶ and the motions of the Official Committee of Unsecured Creditors (the "Creditors' Committee") for discovery with respect to the causes of Puerto Rico's financial crisis.⁷ Indeed, Judge Dein is already familiar with the relief requested herein and its overlap with the Title III Cases and specifically ordered the Independent Investigator to file this Motion by July 3, 2018.⁸ Thus, this Motion is filed in the Title III Cases, as a related matter, and to allow this Court to consider the relief requested herein in connection with any decision on the pending discovery motion of the Creditors' Committee.

8. Venue is proper in this district under sections 104(k), 106(a), and 307(a) of PROMESA.

9. The statutory predicates for the relief requested in this matter are sections 104(k), (o), (p), 105, and 106(a) of PROMESA, sections 105(a), 107(a) and (b) of the Bankruptcy Code, as incorporated by section 301(a) of PROMESA, Rules 7026(c)(1) and

⁵See *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico for Puerto Rico*, 872 F.3d 57 (1st Cir. 2017) ("PROMESA grants original and exclusive jurisdiction to the federal courts to deal with cases that arise under this legislation, particularly those matters that affect Title III of PROMESA.").

⁶ See, e.g., Order dated February 23, 2018, entered by Judge Swain in the Debtors' Title III Cases (ECF No. 2590); see also Stipulated Disclosure Agreement and Protective Order dated April 2, 2018, entered by Judge Swain in the Debtors' Title III Cases (ECF No. 2832).

⁷ See Motion of Official Committee of Unsecured Creditors for Order, under Bankruptcy Rule 2004, Authorizing Discovery Program with Respect to Certain Causes of Puerto Rico Financial Crisis dated July 21, 2017 (ECF No. 706). See also Renewed Motion of Creditors' Committee Seeking Entry of Order, under Bankruptcy Rule 2004, Authorizing Discovery Program with respect to Certain Causes of Puerto Rico Financial Crisis Beginning on August 15, 2018, dated May 15, 2018 (ECF No. 3066).

⁸ See Order dated June 19, 2018, entered by Judge Dein in the Debtors' Title III Cases (ECF No. 3317).

9018 of the Federal Rules of Bankruptcy Procedure, as incorporated by section 310 of PROMESA, and Rules 502(a), (b), (d), (e), (f) and (g) and 1101 of the Federal Rules of Evidence.

BACKGROUND

A. The Debtors' Title III Cases

10. In June 2016, PROMESA was enacted by the U.S. Congress and signed into law to provide, among other things, federal statutory authority under which the Commonwealth of Puerto Rico ("Puerto Rico") and its instrumentalities may restructure their debts.⁹

11. On May 3, 2017, the Oversight Board commenced a debt adjustment proceeding on behalf of Puerto Rico under Title III of PROMESA by filing a voluntary petition for relief under section 304(a) of PROMESA. Thereafter, the Oversight Board commenced the other Title III Cases. By order dated June 29, 2017, Judge Swain approved the joint administration of the Debtors' Title III Cases.

B. The PROMESA Investigation Procedures

12. On May 26, 2017, the Oversight Board passed a resolution establishing the Procedures Adopted by the Financial Oversight and Management Board for Puerto Rico for Conducting Investigations Pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (the "PROMESA Investigation Procedures").¹⁰

13. Under the PROMESA Investigative Procedures, the Oversight Board is authorized to commence any: (i) "Informal Investigation," which is defined as "any inquiry or review of Relevant Activities undertaken by the Board pursuant to PROMESA Section 104(o) or any other authority invested in the Board pursuant to PROMESA for which the

⁹ See PROMESA § 405(m).

¹⁰ See PROMESA Investigation Procedures, available at <https://juntasupervision.pr.gov/index.php/en/documents/>

Board has not adopted an Investigative Resolution”¹¹; and (ii) “Formal Investigation,” which is defined as “any formal inquiry or review of Relevant Activities undertaken by the Board pursuant to PROMESA Section 104(o) or any other authority invested in the Board pursuant to PROMESA, for which inquiry or review the Board or its designated agent has adopted an Investigative Resolution.”¹²

14. The PROMESA Investigation Procedures acknowledge the sensitive nature of the Investigation and generally require materials obtained or generated in connection with the Investigation to be non-public. Specifically, section 3.3(a) of the PROMESA Investigation Procedures provides:

Given the sensitive nature of the Investigations, and the fact that such Investigations will include privileged information and information provided to Board Counsel under promises of confidentiality, unless otherwise ordered by the Board, Investigative Resolutions and the conduct of, and materials obtained and/or generated regarding, any Investigation shall be non-public.¹³

15. Notwithstanding the sensitive nature of the Investigation, section 3.3(b) of the PROMESA Investigation Procedures expressly authorizes the Oversight Board to publish all or any portion of the Investigation:

The Board may, in its sole discretion, determine that it is appropriate for an Investigation, or portions of an Investigation, to be public and, if so, to what extent.¹⁴

16. Section 10.3(a) of the PROMESA Investigative Procedures further authorizes the Oversight Board to “disclose or publish some or all of the materials that are part of the Investigative Record” if the Board determines, “in its sole discretion, that disclosure of such materials is (a) in the public interest, (b) required by PROMESA, and/or (c) necessary to enable the Board to fulfill its obligation under PROMESA, including if disclosure of such materials is necessary to implement any of the actions adopted by the Board in the Board

¹¹ See PROMESA Investigative Procedures § 1.3(a)(10).

¹² See *id.* § 1.3(a)(6).

¹³ *Id.* § 3.3(a).

¹⁴ *Id.* § 3.3(b).

Investigative Findings.”¹⁵

C. Independent Investigator’s Engagement and the Commencement of Informal and Formal Investigations

17. On September 6, 2017, the Oversight Board, acting by and through the Special Investigation Committee, retained Kobre & Kim LLP as the Independent Investigator to conduct the Investigation.¹⁶

18. Shortly after the Independent Investigator’s retention, under sections 2.1 and 3.1 of the PROMESA Investigative Procedures, the Oversight Board’s General Counsel authorized the Independent Investigator to conduct an Informal Investigation regarding: (i) a review of the factors contributing to Puerto Rico’s fiscal crisis, including changes in the economy, expansion of spending commitments and entitlement programs, changes in the federal funding it receives, and its reliance on debt to finance a structural budget deficit; (ii) a review of Puerto Rico’s debt, the general use of proceeds, the relationship between the debt and Puerto Rico’s structural budget deficit, the range of its debt instruments, and how Puerto Rico’s debt practices compare to the debt practices of states and large municipal jurisdictions; and (iii) a review of Puerto Rico’s debt issuance, disclosure, and selling practices, including its interpretation of Puerto Rico’s constitutional debt limit.¹⁷

19. In connection with such Informal Investigation, the Independent Investigator delivered letters to more than 85 entities (collectively, the “Document Preservation and Request Letters”). The Document Preservation and Request Letters identified various categories of documents that the Independent Investigator deemed relevant to the Informal Investigation and requested that the recipients of the letters preserve and produce any responsive documents in their possession, custody, or control.

¹⁵ *Id.* § 10.3(a).

¹⁶ See Kobre & Kim LLP Engagement Letter, dated September 6, 2017, *available at* <https://juntasupervision.pr.gov/index.php/en/documents/>.

¹⁷ See Independent Investigator’s First Interim Report, dated October 30, 2017, *available at* <https://juntasupervision.pr.gov/index.php/en/documents/>.

20. On October 18, 2017, the Special Investigation Committee approved a Resolution Initiating Formal Investigation for Purpose of Issuing Investigative Subpoenas (the “Investigative Subpoenas Resolution”).¹⁸ Under the Investigative Subpoenas Resolution, the Independent Investigator commenced Formal Investigations for the purposes of issuing investigative subpoenas to twelve entities (collectively, the “Investigatory Subpoenas”).

21. On October 30, 2017, the Independent Investigator published its First Interim Report.¹⁹ On April 5, 2018, the Independent Investigator published its Second Interim Report (together with the First Interim Report, the “Interim Reports”).²⁰

D. The Independent Investigator’s Document Collection and Witness Interviews

22. During the course of its Investigation, the Independent Investigator received a total of approximately 200,000 documents and approximately 2,000,000 pages from more than thirty separate Disclosing Parties. The Disclosing Parties include, among others, certain Debtors, financial institutions, rating agencies, financial advisors, professionals, and regulators. The Independent Investigator executed a total of twenty-two non-disclosure agreements with thirty-two Disclosing Parties (the “Non-Disclosure Agreements”).²¹

23. Documents received from the Disclosing Parties were uploaded by the Independent Investigator to a document review platform hosted by Logikcull (the “Logikcull Database”). Documents provided by Puerto Rico or federal agencies or regulators (collectively, the “Government Agency Productions”) were stored separate and apart from

¹⁸ See Resolution Adopted by the Special Investigation Committee Initiating Formal Investigation for the Purpose of Issuing Investigative Subpoenas, dated October 18, 2017, available at <https://juntasupervision.pr.gov/index.php/en/documents/>.

¹⁹ See Independent Investigator’s First Interim Report, dated October 30, 2017, available at <https://juntasupervision.pr.gov/index.php/en/documents/>.

²⁰ See FOMB - Independent Investigator’s Second Interim Report, dated April 5, 2018, available at <https://juntasupervision.pr.gov/index.php/en/documents/>.

²¹ The reason for the difference is that some entities executed Non-Disclosure Agreements jointly with their affiliates.

documents produced by other parties (the “Third-Party Documents”).²² In many cases, documents were produced based on negotiated search terms and custodian lists (the “Search Terms and Custodian Lists”).

24. Under section 104(c)(2) of PROMESA, the Independent Investigator additionally secured direct, read-only access to the email custodial files of dozens of employees and former employees of the Government Development Bank for Puerto Rico (“GDB”) through its representative, the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”).²³ Such documents were made available to the Independent Investigator through a document review platform hosted by Relativity and managed by AAFAF’s counsel (the “Relativity Database”).²⁴ The Independent Investigator has run targeted searches through certain of the GDB custodial files and has undertaken a review of documents responsive to those searches. Periodically throughout the Investigation, the Independent Investigator has requested that AAFAF, acting as representative for GDB, produce specifically identified documents contained within the custodial files. After reviewing the documents for privilege and confidentiality, and marking the documents accordingly, AAFAF would produce the documents to the Independent Investigator on behalf of GDB. To date, thousands of documents have been produced to the Independent Investigator from AAFAF, acting as representative for GDB (the “Produced GDB Documents”).²⁵

²² The Independent Investigator obtained Government Agency Productions under sections 104(c)(1) and (c)(2) of PROMESA.

²³ 48 U.S.C. § 2124(c)(2) provides as follows: “Notwithstanding any other provision of law, the Oversight Board shall have the right to secure copies, whether written or electronic, of such records, documents, information, data, or metadata from the territorial government necessary to enable the Oversight Board to carry out its responsibilities under this chapter. At the request of the Oversight Board, the Oversight Board shall be granted direct access to such information systems, records, documents, information, or data as will enable the Oversight Board to carry out its responsibilities under this chapter.”

²⁴ The number of documents included in the Relativity Database has been previously disclosed to the Committees and the Court.

²⁵ Produced GDB Documents were uploaded to the Logikcull Database and fall within the group of documents defined as “Third-Party Documents.”

25. In addition to collecting and reviewing documents, the Independent Investigator conducted a total of 107 witness interviews as of July 3, 2018.

26. Beginning on April 5, 2018, the Special Investigation Committee also made available to the public an email address to which comments, suggestions, or requests could be sent directly to the Independent Investigator (the “Public Comment Box”). Parties submitting materials to the Public Comment Box were made aware that their communications were not confidential.

E. The Independent Investigator’s Ongoing Cooperation with the Committees

27. On July 21, 2017, the Creditors’ Committee filed the Motion of Official Committee of Unsecured Creditors for Entry of Order under Bankruptcy Rule 2004 Authorizing Discovery Program with Respect to Certain Causes of Puerto Rico Financial Crisis (the “Rule 2004 Motion”). The Oversight Board opposed the Rule 2004 Motion, in part, because it had created the Special Investigation Committee and hired the Independent Investigator to investigate matters subject to the Rule 2004 Motion.²⁶ On November 17, 2017, the Court denied the Rule 2004 Motion without prejudice.²⁷

28. The Independent Investigator executed a Confidentiality, Cooperation, and Non-Disclosure Agreement with the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee”) on November 3, 2017. The Independent Investigator executed a Confidentiality, Cooperation, and Non-Disclosure Agreement with the Creditors’ Committee on March 5, 2018. Under these agreements, the Independent Investigator has conducted weekly investigation update calls with each of the Retiree Committee and the Creditors’ Committee (together, the “Committees”). On its

²⁶ See Objection of Debtors to Motion of Official Committee of Unsecured Creditors for Entry of Order, under Bankruptcy Rule 2004, Authorizing Discovery Program with respect to Certain Causes of Puerto Rico Financial Crisis, dated August 3, 2017 (ECF No. 859) ¶ 1; *see also* Status Report of Financial Oversight and Management Board for Puerto Rico Regarding Motion of Official Committee of Unsecured Creditors for Entry of Order, under Bankruptcy Rule 2004, Authorizing Discovery Program, dated September 12, 2017 (ECF No. 1289) ¶ 15.

²⁷ See Order, dated November 17, 2017, entered by Judge Dein in the Debtors’ Title III Cases (ECF No. 1827).

weekly calls, the Independent Investigator has kept the Committees informed of the witnesses with whom the Independent Investigator would be speaking, and the proposed areas of inquiry for those witnesses. The Independent Investigator solicited and received the Committees' input on multiple aspects of the Investigation, including input concerning proposed document requests, custodians, and search terms for various witnesses.

29. On May 15, 2018, the Creditors' Committee renewed its Rule 2004 Motion (the "Renewed Rule 2004 Motion"),²⁸ which the Oversight Board opposed.²⁹ After a hearing held before Judge Dein on June 6, 2018, the Court adjourned the Renewed Rule 2004 Motion to June 18, 2018, and ordered that the Oversight Board provide a description of the Independent Investigator's "exit plan."³⁰

30. On June 13, 2018, the Oversight Board filed the Statement of the Independent Investigator, which, among other things, described its "exit plan," including the contents of this Motion.³¹ After the hearing on June 18, 2018, Judge Dein again adjourned the hearing on the Renewed Rule 2004 Motion, and ordered that, among other things, the Independent Investigator file this Motion by July 3, 2018 and meet and confer with the Committees regarding a proposed order.³²

31. Consistent with the Court's order, the Independent Investigator has conferred with each of the Committees concerning the relief requested herein and the terms of the Proposed Order. In response to input from both Committees, the Independent Investigator agreed to file this Motion in the Title III Cases, one of the concerns raised by the Committees

²⁸ See Renewed Motion of Creditors' Committee Seeking Entry of Order, under Bankruptcy Rule 2004, Authorizing Discovery Program with respect to Certain Causes of Puerto Rico Financial Crisis Beginning on August 15, 2018, dated May 15, 2018 (ECF No. 3066).

²⁹ See Objection of Debtors to Renewed Motion of Official Committee of Unsecured Creditors for Entry of Order, under Bankruptcy Rule 2004, Authorizing Discovery Program with respect to Certain Causes of Puerto Rico Financial Crisis Beginning on August 15, 2018, dated May 22, 2018 (ECF No. 3117).

³⁰ See Order dated June 6, 2018, entered by Judge Dein in the Debtors' Title III Cases (ECF No. 3274).

³¹ See Status Report of the Oversight Board Addressing the Court's Directive in Its June 7, 2018 Order, dated June 13, 2018 (ECF No. 3303).

³² See Order dated June 19, 2018, entered by Judge Dein in the Debtors' Title III Cases (ECF No. 3317).

at the hearing on June 18, 2018. In addition to conferring, the Independent Investigator provided drafts of this Motion and the Proposed Order to the Committees for their review and comment.

RELIEF REQUESTED

32. By filing this Motion, the Independent Investigator seeks entry of the Proposed Order: (i) establishing procedures for resolving any confidentiality dispute in connection with publication of the Independent Investigator's Final Report; (ii) approving the disposition of certain documents and information; (iii) relieving the Independent Investigator from certain discovery obligations; (iv) exculpating the Independent Investigator in connection with the Investigation and publication of the Final Report; and (v) granting related relief.

I. Procedures for Resolution of Any Objection to the Disclosure of Confidential Information in the Final Report

33. Under both the Non-Disclosure Agreements and section 10.3 of the PROMESA Investigation Procedures, the Independent Investigator is authorized to disclose or publish some or all of the materials provided by a witness if, among other things, the Oversight Board determines, in its sole discretion, that disclosure of such materials is (a) in the public interest; (b) required by PROMESA; and/or (c) necessary to enable the Independent Investigator to fulfill its obligations under PROMESA. Certain of the Non-Disclosure Agreements require the Independent Investigator to provide Disclosing Parties advance written notice of the disclosure of their information protected from disclosure under the terms of the Non-Disclosure Agreements ("Confidential Information"), and the Independent Investigator intends to abide by these commitments. To facilitate this notice process and the resolution of any dispute over the publication of Confidential Information,

the Independent Investigator requests approval of the procedures proposed below (the “Publication Procedures”).³³

34. Under the Publication Procedures, if any of the Non-Disclosure Agreements requires the Independent Investigator to provide advance notice of the publication of the Disclosing Party’s Confidential Information, the Disclosing Party will be afforded an opportunity to: (i) confer and resolve any dispute over Confidential Information with the Independent Investigator consensually; and (ii) if the dispute is unresolved, seek a protective order or similar relief before disclosure of such information.³⁴

35. The Publication Procedures are as follows:

- a. The Independent Investigator will provide a written notice, by *email or overnight delivery*, to each Disclosing Party identifying the Disclosing Party’s Confidential Information that the Independent Investigator may use in the Final Report at the latest five (5) business days before publication of the Final Report, unless the Non-Disclosure Agreement between the Independent Investigator and the Disclosing Party provides for a different period, in which case the Non-Disclosure Agreement’s different period will govern (the “Notice Period”). Any objection to the disclosure by the Independent Investigator of such Confidential Information must be transmitted by email or overnight mail to be *received* by the Independent Investigator within the Notice Period.³⁵
- b. During the Notice Period, the Disclosing Parties must: (i) hold the identity and content of any Confidential Information about which the Independent Investigator has given notice in strict confidence (including any statement, finding, or conclusion of the Independent Investigator, or any portion of the Final Report, that is shared with the Disclosing Party in connection with the Publication Procedures) and (ii) make no disclosure to any person, except its counsel, of the identity or content of the

³³ Some Disclosing Parties have made a blanket designation of all of materials produced as “Confidential” under the Non-Disclosure Agreements, which may be overbroad. The Independent Investigator has the right to disclose such information under the Non-Disclosure Agreements and PROMESA, and will, nevertheless, endeavor to limit any disputes regarding such matters. In any event, and as set forth in the Publication Procedures, the ultimate burden of seeking protection of any alleged Confidential Information is on the Disclosing Parties.

³⁴ If the Independent Investigator intends to attribute in the Final Report a specific statement made by a Disclosing Party in an interview, then the Independent Investigator will notify such Disclosing Party in accordance with the Publication Procedures.

³⁵ See, e.g., Order Governing the Production and Use of Confidential Material Among the Examiner, the Official Committee of Unsecured Creditors, the Debtors, and Non-Parties ¶ (g), *In re Enron Corp.*, No. 01-16034, 2002 WL 32156065, at *2-3 (Bankr. S.D.N.Y. Oct. 10, 2002) (approving five (5) business days’ notice by facsimile or overnight delivery to allow producing parties to serve an objection), attached hereto as Exhibit B.

Confidential Information that the Independent Investigator may use in the Final Report.³⁶

- c. If no objection is made within the Notice Period, any Disclosing Party shall be deemed to have waived any claim that such Confidential Information is entitled to non-disclosure, and the Independent Investigator may promptly publish the Final Report and any related exhibits disclosing such Confidential Information.
- d. If a Disclosing Party makes an objection within the Notice Period, the Disclosing Party must confer in good faith directly with the Independent Investigator to attempt to resolve its challenge concerning any of the Confidential Information identified by the Independent Investigator for inclusion in the Final Report. In conferring, the Disclosing Party must: (i) explain the basis for its belief that the inclusion of the Confidential Information in the Final Report is not proper and (ii) give the Independent Investigator an opportunity to (a) review the objection and the designated Confidential Information, (b) reconsider the designation, and (c) if no change in the designation is offered, to explain the basis for the designation. The Independent Investigator may respond by email or overnight mail to the Disclosing Party concerning the challenge within five (5) business days (the “Meet and Confer Procedure”).³⁷
- e. If any of the Disclosing Parties makes an objection within the Notice Period and such objection is not resolved under the Meet and Confer Procedure, the Disclosing Party must file with this Court and serve a motion for a protective order, on an expedited basis scheduled in compliance with the Case Management Order³⁸, seeking to prohibit the public disclosure of the Confidential Information proposed to be included in the Final Report within five (5) business days of the conclusion of the Meet and Confer Procedure if it wishes to adhere to its objection (the “Motion for Protective Order”). Each such Motion for Protective Order must be accompanied by a declaration that affirms that the Disclosing Party has complied with the Meet and Confer Procedure. The burden of persuasion in any such Motion for Protective Order shall rest with the Disclosing Party asserting confidentiality and seeking to seal, redact, or prevent disclosure of the Final Report.³⁹
- f. No Confidential Information may be filed by any party with the Court unless (i) upon advanced written consent; or (ii) filed under seal under Local Bankruptcy Rule 9018-1 and the District Court’s Standing Order No. 9.⁴⁰

³⁶ *Id.*

³⁷ *See, e.g.*, Stipulated Disclosure Agreement and Protective Order ¶ 11 entered in the Debtors’ Title III Cases (ECF No. 2832) (granting similar relief).

³⁸ *See* Order Further Amending Case Management Procedures dated April 4, 2018 entered by Judge Swain in the Debtors’ Title III Cases (ECF No. 2839).

³⁹ *See, e.g.*, Stipulated Disclosure Agreement and Protective Order ¶ 12 entered in the Debtors’ Title III Cases (ECF No. 2832) (granting similar relief). *See also In re FiberMark, Inc.*, 330 B.R. 480, 504 (Bankr. D. Vt. 2005) (“Since this is the first time the Court is being asked to make a determination as to whether the Report should be sealed under § 107, based upon the contents of the Report, the burden is on the parties seeking to seal the report to demonstrate grounds for deviating from the general rule of public access under § 107(a). Thus, the Seal Proponents have the burden of proof.”).

⁴⁰ *See, e.g.*, Stipulated Disclosure Agreement and Protective Order ¶ 10 entered in the Debtors’ Title III Cases (ECF No. 2832) (granting similar relief).

- g. The Independent Investigator shall maintain the confidentiality of such Confidential Information during the pendency of an objection and, if a Motion for Protective Order is filed, until the Court resolves the Motion for Protective Order. If the Independent Investigator publishes the Final Report during the pendency of an objection or Motion for Protective Order, the Independent Investigator must redact the applicable portions of the Final Report so as to preserve such Confidential Information.⁴¹
- h. Nothing in the Publication Procedures shall limit the Independent Investigator's ability to file or publish all, or any portion of, the Final Report under seal or with redactions during, or in advance of, the Notice Period. Nothing in the Publication Procedures shall limit the ability of the Committees to seek access to information filed under seal or to object to the fact that certain information is filed under seal.

36. Disclosing Parties have been on notice of the potential publication of their Confidential Information for months, as publication of the Final Report is required by section 104(p) of PROMESA, was discussed in the Independent Investigator's Interim Reports, and was acknowledged in many of the Non-Disclosure Agreements executed by Disclosing Parties. Nevertheless, to the extent there are disputes about the publication of Confidential Information, the Publication Procedures will funnel any such dispute to this Court so that all similar disputes are addressed uniformly. The Independent Investigator is ready, on approval of this Motion, to commence sending notices to Disclosing Parties thereby starting the Publication Procedures.

37. Further, the Publication Procedures are consistent with the protections afforded to the Disclosing Parties under the Non-Disclosure Agreements.⁴² Nothing under the Proposed Order shall prevent or prejudice any Disclosing Party from seeking additional, lesser, or greater protections, with respect to the use or disclosure of their Confidential Information, than those set forth in the Non-Disclosure Agreements. All Disclosing Parties,

⁴¹ See, e.g., Exhibit B (Enron Corp.) ¶ (g).

⁴² The Publication Procedures are also consistent with the procedures established for protection of Confidential Information in the Title III Cases, among other cases.

including all parties to the Non-Disclosure Agreements, have been provided notice of this Motion and an opportunity to respond.⁴³

38. For the foregoing reasons, the Publication Procedures should be approved.

II. Disposition of Certain Documents and Information and Access to the Centralized Document Depository

A. Disposition of Documents and Information

39. Whereas the Independent Investigator's investigation duties will largely conclude with the publication of the Final Report, other parties in interest or members of the public may review the Final Report and determine that they would like access to documents that have been collected by the Independent Investigator. Accordingly, the Independent Investigator intends to coordinate with the Oversight Board to organize the materials collected during the course of the Investigation and to establish and transfer various documents and information to a secure centralized document depository (the "Document Depository"), which will be maintained by a neutral vendor on behalf of the Oversight Board (the "Neutral Vendor").

40. Specifically, the Independent Investigator intends to transfer the following documents and information (collectively, the "Investigative Record") to the Document Depository: (a) the Preservation and Document Request Letters; (b) the Investigatory Subpoenas; (c) the Search Terms and Custodian Lists; (d) the Third-Party Documents⁴⁴; (e) documents within the Government Agency Productions for which the applicable Puerto Rico or federal agency or regulator has agreed or not objected to placement in the Document Depository; (f) the Public Comment Box; and (g) the Final Report and all exhibits and

⁴³ See Order to Establish a Procedure to Unseal the Examiner's Report, to Establish a Briefing Schedule to Resolve Remaining Confidentiality Issues, and to Establish a Procedure to Provide Access to Documents Cited in the Examiner's Report, ¶ 3(F), *In re Lehman Bros. Holdings, Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Mar. 11, 2010) ("In the absence of a timely objection, any person who has received notice of this Order and the Motion shall be deemed to have waived any claim that the Underlying Document is entitled to non-disclosure"), attached hereto as Exhibit C.

⁴⁴ The "Third-Party Documents" include the Produced GDB Documents, other than documents marked "Highly Confidential" (i.e., asserted to be privileged) by AAFAF.

appendices thereto and all documents referenced in the footnotes to the Final Report (the “Final Report Documents”).

41. The Independent Investigator received Government Agency Productions from the Securities and Exchange Commission (“SEC”), the Financial Industry Regulatory Authority (“FINRA”), and the Oficina del Comisionado de Instituciones Financieras (“OCIF”). There is currently no agreement with FINRA or the SEC regarding the transfer to the Document Depository of the documents they provided to the Independent Investigator, although discussions regarding the treatment of such documents are ongoing. OCIF has agreed that the documents it provided to the Independent Investigator, including those provided by Disclosing Parties to OCIF, may be transferred to the Document Depository, except for one examination report that is confidential under Puerto Rico law. The arrangements with the SEC, OCIF, and FINRA are reflected in the Proposed Order, subject to revision depending on discussions with parties in interest and, ultimately, the Order of the Court.

42. The Proposed Order authorizes the Independent Investigator to facilitate this transfer of the Investigative Record and requires the Neutral Vendor to take custody and maintenance of the Document Depository for such period as required by law or as otherwise ordered by the Court, but at a minimum, until the effective date of a plan of adjustment for each of the Debtors confirmed by the Court. If there is any conflict or inconsistency between the terms of a Non-Disclosure Agreement and the Proposed Order (e.g., concerning a Disclosing Party’s right to demand return or destruction of its documents or other Confidential Information), the terms of the Proposed Order shall control.

43. As to the documents provided to the Independent Investigator by AAFAF, on its behalf or acting as representative for GDB, the Proposed Order provides that the Independent Investigator will return all documents identified as “Highly Confidential” (i.e.,

asserted to be privileged) by AAFAF or GDB, unless such documents are included as Final Report Documents with the consent of AAFAF or GDB. The Proposed Order also provides that AAFAF will continue to maintain the Relativity Database until the conclusion of all Title III proceedings concerning the Commonwealth of Puerto Rico or any of its instrumentalities, unless ordered otherwise by further order of the Court.⁴⁵

44. The Proposed Order additionally authorizes the Independent Investigator, in its sole discretion, to discard or delete (in case of electronic materials) all other documents and information not included within the Investigative Record, including without limitation, documents that are protected by the Independent Investigator's attorney-client privilege, the work product doctrine, and any other applicable privilege (the "Independent Investigator's Privileged Materials").

B. Procedures to Access the Document Depository

45. The Independent Investigator proposes that the procedures set forth below govern any request by a party in interest to access the Document Depository maintained by the Neutral Vendor (the "Access Procedures").

46. For the avoidance of doubt, nothing contained in the Access Procedures is intended to expand, contract, waive, or modify the rights of any party in interest or member of the public to seek access to one or more documents contained in the Document Depository. Instead, the Access Procedures are aimed at ensuring that: (i) the Neutral Vendor and the Oversight Board are provided with appropriate direction regarding granting access to the Investigative Record, and (ii) the Disclosing Parties are provided with appropriate notice that a party in interest or member of the public is requesting access to the documents they produced in connection with the Investigation.

⁴⁵ The Independent Investigator has been informed that certain disputes may arise regarding at least some of the documents designated "Highly Confidential" by AAFAF. The Proposed Order specifically reserves all parties' rights to challenge or defend AAFAF's "Highly Confidential" designation for any document so designated and also reserves all parties' rights to seek access to or dispute access to the Relativity Database.

47. The Access Procedures for the Document Depository are as follows:

- a. In the case of a request by a person or entity that is not a party to a pending civil litigation in a court of competent jurisdiction, a document request (“Document Request”) must be served on the attorneys for the Oversight Board and forwarded to the Neutral Vendor. A Document Request shall not be filed with the Court. In the case of a request by a person or entity that is a party to a pending civil litigation, including the Oversight Board, a subpoena under Rule 45 of the Federal Rules of Civil Procedure or any other applicable rules (“Subpoena”) shall be served in compliance with all rules governing notice and discovery in that litigation and shall also be served on attorneys for the Oversight Board to the extent the Oversight Board is not a named party to the litigation, and forwarded to the Neutral Vendor.
- b. Any Document Request or Subpoena must be accompanied by search terms and relevant time periods (the “Search Terms”), unless the Document Request or Subpoena seeks access to all documents contained in the Document Depository. Upon receipt of the Search Terms, the Neutral Vendor shall promptly apply them to the Document Depository to identify responsive documents and relevant producing parties (each, a “Producing Party”).
- c. After receipt of a Document Request or Subpoena and application of the Search Terms (as applicable), the Neutral Vendor shall promptly provide a notice to each Producing Party, setting out (i) the identity of the party making the request (the “Requesting Party”) and (ii) the Document Request or Subpoena, together with the Search Terms or a statement that all of the Producing Party’s documents have been requested by the Requesting Party (as applicable). The Neutral Vendor shall provide the Requesting Party and any other person or entity that has been served with notice of a Subpoena by the Requesting Party in accordance with paragraph 47(a) above, a copy of the Notice.
- d. The Oversight Board and the Producing Party (collectively, the “Interested Parties”) shall have ten (10) business days from the date of Notice to informally object to the Document Request and shall serve such objection on the Requesting Party and the other Interested Parties with a copy to the Neutral Vendor. An objection to a Document Request shall not be filed with the Court. If a timely objection to the Document Request is asserted, the objecting party or parties and the Requesting Party shall confer within ten (10) business days of the assertion of an objection in an effort to resolve the objection. If the objection cannot be resolved, the objecting party or parties may, within ten (10) additional business days, make a motion with the Court to be heard at the next omnibus hearing and in compliance with the Case Management Order⁴⁶ governing the Debtors’ Title III Cases seeking an order restricting or prohibiting access to the requested documents, or for such other relief as may be appropriate. If such a motion is filed, the Neutral Vendor shall not comply with the Document Request pending the disposition of the motion. If no timely objection is asserted to a Document Request, or if no motion is filed within twenty (20) business days after assertion of an objection, the Neutral Vendor shall promptly make the requested documents available to the Requesting Party via a document production.

⁴⁶ See Order Further Amending Case Management Procedures dated April 4, 2018 entered by Judge Swain in the Debtors’ Title III Cases (ECF No. 2839).

Nothing herein shall confer standing on any party to object to a Document Request and all rights to contest, object to, or support standing of an objecting party are preserved.

- e. If any documents produced by the Neutral Vendor to the Requesting Party as set forth in paragraph 47(d) above have been previously marked as “Professional Eyes Only” or with similar designations, then absent a further court order, the Requesting Party shall abide by such designation.
- f. Objections to a Subpoena issued in a pending civil litigation shall be heard in that litigation and governed by the applicable rules of civil procedure and discovery in such litigation. Nothing herein shall confer standing on any party to object to a Subpoena and all rights to contest, object to, or support standing of an objecting party are preserved. Further, nothing herein shall provide a person or entity greater rights to obtain documents or information from the Neutral Vendor or the Document Depository than such person or entity has under applicable law.

48. In proposing the Access Procedures, the Independent Investigator is interested in preserving materials broadly for all parties in interest. The Independent Investigator has no interest in any particular party’s access to or use of any particular document.

49. For the foregoing reasons, the Access Procedures should be approved.

III. Assistance from the Independent Investigator after Publication of the Final Report

50. The Independent Investigator was retained to conduct the Investigation and to publish the Final Report. Thereafter, the Independent Investigator will take necessary steps to transition the custody of the Investigative Record to the Neutral Vendor, which will maintain the Document Depository in the future.

51. If, after publication of the Final Report, the Independent Investigator receives requests for cooperation and assistance from any party in interest, the Independent Investigator proposes that it will respond as follows:

- a. In response to requests from the Oversight Board, the Debtors, the Committees, Puerto Rico or federal agencies or regulators, or the United States Trustee, the Independent Investigator will meet and confer with such parties concerning their requests and provide cooperation and assistance until at least June 1, 2019, or confirmation of a plan of adjustment for the Title III Debtors, whichever is earlier, unless the engagement of the Independent Investigator by the Special Investigation Committee is terminated sooner.

- b. The Independent Investigator may provide such cooperation and assistance as the Special Investigation Committee deems appropriate in response to requests from other parties in interest; *provided* that, the requesting party shall provide notice of its request for cooperation and assistance to the Oversight Board, the Debtors, the Committees, and, in the event that the requesting party is a party to an existing civil litigation, the other parties to such litigation. Unless otherwise directed by the Oversight Board, acting by and through the Special Investigation Committee, the Independent Investigator will not respond to requests for cooperation or assistance from parties in interest other than those provided for in paragraph 51(a) above after June 1, 2019 unless the engagement of the Independent Investigator by the Special Investigation Committee is terminated sooner.

IV. Relief from Certain Discovery Obligations

52. It is possible that third parties will seek formal written discovery or testimony from the Independent Investigator after publication of the Final Report, notwithstanding the transfer of the Investigative Record to the Document Depository and the prospect of obtaining the Independent Investigator's voluntary cooperation. As set forth below, the Independent Investigator respectfully requests that the Court issue an order relieving the Independent Investigator from certain discovery obligations, consistent with the relief granted to bankruptcy examiners.

53. Specifically, the Independent Investigator requests that, with certain limited exceptions, the Independent Investigator be relieved from any requests for production of documents, requests for admissions, requests for testimony or deposition, interrogatories, subpoenas for production of documents, subpoenas to give oral testimony, trial subpoenas, or any other discovery of any kind relating to the Investigation or Final Report. The certain limited exceptions include: (i) documents for which a requesting party has demonstrated to the Court that it has been unable to obtain from any other source, after providing an affirmation to that effect; (ii) an order of a federal district court presiding over a criminal proceeding in which a party in interest is a defendant finding that the Independent Investigator is obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), as embodied in subsequent caselaw and

the Federal Rules of Criminal Procedure; or (iii) productions required in response to any subpoena or formal request made by or on behalf of any state, federal or Puerto Rico governmental or regulatory agency acting under its police or regulatory powers.

54. Courts often limit third-party discovery against examiners and their professionals to the same extent requested herein.⁴⁷ The basis for limiting discovery as against an examiner has been succinctly stated as follows:

[The duties of an Examiner are] comparable to that of a civil grand jury . . . to ascertain legitimate areas of recovery and appropriate targets for recovery. If Examiners in other cases are to perform these civil grand jury functions effectively, and if their nonadversarial role is to be maintained, they and the subjects of their investigation must be unhampered by the threat that any information which comes into the Examiner's hands will be fair game for a plethora of anxious litigants, regardless of the limitations on disclosure which the Bankruptcy Court has imposed. Even absent such limitations on disclosure, we believe that the Examiner, as a nonparty to any proceeding and a nonadversarial officer of the Court, is entitled to some immunity from the whirlwind of litigation commonly attendant to large Chapter 11 cases.⁴⁸

55. The rationale for limiting discovery against examiners applies with equal force to the Independent Investigator. The Independent Investigator fulfills a statutory, non-adversarial role under section 104(o) of PROMESA, much like an examiner under section 1104(a) of the Bankruptcy Code. Further, like an examiner who is required to file a

⁴⁷ See, e.g., Order Approving Examiner's Motion for Entry of Order Granting Discharge from Duties, Relief from Discovery, Approval of Disposition of Investigative Materials, and Exculpation in Connection with Duties, at 2-3, *In re Residential Capital, LLC*, Case No. 12-12020 (MG) (Bankr. S.D.N.Y. Sept. 24, 2013), attached hereto as Exhibit D; Order Discharging Examiner and Granting Related Relief, ¶ 3, *In re Lehman Bros. Holdings, Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. July 13, 2010), attached hereto as Exhibit E; Order Discharging Examiner and Establishing Related Procedures, ¶ 9, *In re Refco Inc.*, Case No. 05-6006 (RDD) (Bankr. S.D.N.Y. Aug. 16, 2007), attached hereto as Exhibit F; Order Granting Motion of Neal Batson, the Enron Examiner, with respect to Certain Procedural Issues in connection with the Termination of the Enron Corp. Examination, ¶ 2, *In re Enron Corp.*, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Feb. 19, 2004), attached hereto as Exhibit G; see also Order Approving Motion of Court-Appointed Examiner, Kenneth N. Klee, Esq., for Order (I) Discharging Examiner; (II) Granting Relief from Third-Party Discovery; (III) Approving the Disposition of Certain Documents and Information; and (IV) Granting Certain Ancillary Relief, ¶ 7, *In re Tribune Co.*, Case No. 08-13141 (KJC) (Bankr. D. Del. Aug. 26, 2010), attached hereto as Exhibit H.

⁴⁸ *In re Baldwin United Corp.*, 46 B.R. 314, 316-17 (Bankr. S.D. Ohio 1985) (internal citations and quotation marks omitted). See also *In re Gitto/Glob. Corp.*, 321 B.R. 367, 371-72 (Bankr. D. Mass.), *aff'd sub nom. In re Gitto Glob. Corp.*, No. CIV.A. 05-10334-DPW, 2005 WL 1027348 (D. Mass. May 2, 2005), *aff'd*, 422 F.3d 1 (1st Cir. 2005) ("These movants correctly note the Baldwin court agreed with the examiner's characterization of his investigative responsibilities 'to ascertain legitimate areas of recovery and appropriate targets for recovery' as akin to the function of a civil grand jury . . .") (quoting *Baldwin*, 46 B.R. at 317).

“statement” of his or her investigation under section 1106(a)(4) of the Bankruptcy Code, the Independent Investigator is required to make public the findings of its investigation under section 104(p) of PROMESA. As recognized by the District Court for the Southern District of New York, “the public interest is in the Report and the Examiner’s conclusions, not in the Record upon [which] the conclusions are based.”⁴⁹ Likewise, in this case, the public interest is in the Independent Investigator’s Final Report, which will be published, and not in the materials and other information relied upon by the Independent Investigator that has not been disclosed or discussed in connection with the Final Report.

56. The Independent Investigator intends to transfer the Investigatory Record to the Document Depository, and has proposed the Access Procedures as the appropriate mechanism for parties in interest to seek disclosure of the Investigatory Record. No party in interest should be permitted to seek discovery from the Independent Investigator absent a showing that discovery cannot be obtained from any other source (such as from the Document Depository or a Disclosing Party). The Access Procedures represent an efficient and cost-effective means by which parties in interest may seek access to the Investigatory Record, and the relief requested herein will ensure that parties pursue those procedures, rather than target the Independent Investigator after publishing the Final Report.

57. For these reasons, the Independent Investigator respectfully requests relief from discovery obligations, as set forth in the Proposed Order.

V. Exculpation

A. Exemption from Liability under Section 105 of PROMESA

58. This Court has a statutory basis to exempt the Independent Investigator from liability for claims under section 105 of PROMESA, which provides that:

⁴⁹ *Air Line Pilots Ass’n, Int’l v. Am. Nat’l Bank & Tr. Co. of Chi. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 435 (S.D.N.Y. 1993).

The Oversight Board, its members, and its employees shall not be liable for any obligation of or claim against the Oversight Board or its members or employees or the territorial government resulting from actions taken to carry out this chapter.⁵⁰

The Oversight Board, acting by and through the Special Investigation Committee, delegated to the Independent Investigator its statutory functions, duties, and obligations to conduct the Investigation (under section 104(o) of PROMESA) and to publish its findings (under section 104(p) of PROMESA). Under these circumstances, the Independent Investigator is entitled to the same statutory immunity and the same degree of protections for carrying out its duties and obligations under PROMESA, including the Investigation and publication of the Final Report, as the Oversight Board under section 105 of PROMESA.⁵¹

59. The Proposed Order provides that the Independent Investigator is exculpated from potential claims under section 105 of PROMESA. Approving such relief in advance of publication of the Final Report will ensure, among other things, that no party can use the threat of litigation and liability against the Independent Investigator as a means of attempting to influence the contents of the Final Report.

B. Immunity from Damage Claims Ordinarily Granted to Bankruptcy Examiners

60. In the alternative, if the Court determines that section 105(a) of PROMESA does not protect the Independent Investigator, the Independent Investigator respectfully requests that the Court issue an order providing that neither the Independent Investigator nor its employees or agents have any liability with respect to any act, omission, statement, or representation arising out of, relating to, or involving in any way, the Investigation, the Non-

⁵⁰ See 48 U.S.C. § 2125.

⁵¹ This Court has ordered exculpation under section 105 of PROMESA under similar circumstances. See Order Approving COFINA Agent's Motion Pursuant to 48 U.S.C. § 2161 and 11 U.S.C. § 105(a) for Order; (I) Confirming that 48 U.S.C. § 2125 Applies to COFINA Agent; (II) Confirming Retention of Local Counsel; and (III) Clarifying Payment of Fees and Expenses of COFINA Agent and Her Professionals, ¶ 2 ("The protections of 48 U.S.C. § 2125 ("Immunity Protections") shall apply to the COFINA Agent, the Commonwealth Agent (together with the COFINA Agent, the "Agents") and their respective professionals and employees with respect to all actions of the COFINA Agent or Commonwealth Agent, as applicable, taken in good faith to carry out their duties under the Stipulation and Order"), entered by Judge Swain on November 3, 2017 in the Debtors' Title III Cases (ECF No. 1612).

Disclosure Agreements, or Final Report, except in the case of gross negligence or willful misconduct.

61. The Court should grant the requested exculpation based on the legal standard applied in multiple chapter 11 cases except for claims arising from willful misconduct or gross negligence. The duties and responsibilities undertaken, and the relief requested herein, by the Independent Investigator are similar to the duties and responsibilities undertaken by, and the relief granted to, bankruptcy examiners retained under similar circumstances.⁵² Indeed, courts have granted exculpation to examiners and their professionals in multiple chapter 11 cases.⁵³ The Independent Investigator should be entitled to similar exculpation and the same immunity from damage claims that is ordinarily granted to bankruptcy examiners.⁵⁴

62. Bankruptcy examiners have been recognized as “court fiduciaries” or “quasi-judicial officers” and thus protected by “absolute immunity” because they serve a function similar to the functions served by a grand jury, receiver, referee, conservator, special master, magistrate, or prosecutor.⁵⁵ Like a non-adversarial bankruptcy examiner who “is amenable to no other purpose or interested party,”⁵⁶ the Independent Investigator is disinterested and performs its duties at the request of the Special Investigation Committee for the benefit of the Oversight Board, the Debtors, their creditors, and the public in general. If its non-adversarial

⁵² See *supra* note 46.

⁵³ See Exhibit D at 3-4 (Residential Capital); Exhibit E ¶ 2 (Lehman Brothers); Exhibit F ¶ 10 (Refco); Order Granting Motion of Neal Batson, the Enron Examiner, with respect to Certain Procedural Issues in connection with the Termination of the Enron Corp. Examination ¶ 3, *In re Enron Corp.*, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Dec. 17, 2003), attached hereto at Exhibit I; Exhibit H ¶ 6 (Tribune Company).

⁵⁴ See *Baldwin*, 46 B.R. at 317; *Kovalesky v. Carpenter*, No. 95-CIV-3700 (SAS), 1997 WL 630144, *4-5 (S.D.N.Y. October 9, 1997).

⁵⁵ See, e.g., *Kovalesky*, 1997 WL 630144, at *4 (stating that a bankruptcy examiner is “considered a quasi-judicial officer similar to a trustee, receiver, referee, conservator, special master, magistrate or prosecutor—and thus is protected by *absolute immunity*.”) (emphasis added); see also *Baldwin*, 46 B.R. at 317 (stating that a bankruptcy examiner is like a “grand jury” and “is entitled to some immunity from the whirlwind of litigation commonly attendant to large Chapter 11 cases”).

⁵⁶ *Baldwin*, 46 B.R. at 316.

and independent role is to be maintained, the Independent Investigator and the Investigation must be unhampered by the threat of litigation.⁵⁷

63. The Independent Investigator has provided value to the Oversight Board, the Debtors, their creditors and other parties in interest through its efforts in conducting the Investigation and should not be subjected to future litigation. The Debtors' bankruptcy cases are some of the largest, most complex, and litigious matters, and therefore the relief requested is reasonable in light of potential litigation risks and other relevant factors (such as avoiding any delay in publishing the Final Report). Exculpation of the Independent Investigator is fair, equitable, and necessary to avoid any wasteful and collateral litigation regarding the Investigation and publication of the Final Report.

64. For all these reasons, and consistent with section 105 of PROMESA, or the relief granted to bankruptcy examiners under similar circumstances, the Independent Investigator should be exculpated from liability as set forth in the Proposed Order.

NOTICE

65. Notice of this Motion has been provided to the following individuals or entities, or their counsel, if known: (i) the Oversight Board; (ii) the Debtors; (iii) AAFAF; (iv) the Creditors' Committee; (v) the Retiree Committee; (vi) all Disclosing Parties,

⁵⁷ *Kovalesky*, 1997 WL 630144, at *4 ("When the examiner's duties are limited to conducting an investigation, then the interest in obtaining a full and fair report from the examiner militates strongly against permitting any party from using threats of litigation and liability against the examiner to influence the report") (citing Leonard L. Gumpert, *The Bankruptcy Examiner*, 20 Cal. Bankr. J. 71, 127–128, 129 (1992)); *see also Feliciano v. Puerto Rico State Ins. Fund*, 818 F. Supp. 2d 482, 491, 493 (D.P.R. 2011) ("By granting absolute immunity to the official examiners of the administrative agencies will ensure that their quasi-judicial functions will be performed without harassment or intimidation.") (citing, among other cases, *Pierson v. Ray*, 386 U.S. 547, 554 (1967) (noting justifications for the doctrine of absolute immunity, including, among other things, preventing threat of suit from influencing decision and necessity of finality)). *See generally Gonzalez-Droz v. Gonzalez-Colon*, 717 F. Supp. 2d 196, 208 (D.P.R. 2010), *aff'd on other grounds*, 660 F.3d 1 (1st Cir. 2011) (granting absolute immunity to members of Puerto Rico medical board and stating that "it is well settled 'that neither a state agency nor a state official acting in his official capacity may be sued for damages in a section 1983 action[.]'" (quoting *Wang v. New Hampshire Bd. of Registration in Medicine*, 55 F.3d 698, 701 (1st Cir. 1995) (concluding that Board members and its counsel were absolutely immune from suit, in their individual capacities, with respect to doctor's section 1983 claim for monetary relief) and citing, among other cases, *Bettencourt v. Bd. of Registration In Med. of Mass.*, 904 F.2d 772, 781-82 (1st Cir. 1990) (recognizing that members of the Massachusetts Board of Registration in Medicine were entitled to absolute immunity for their quasi-judicial functions)).

including witnesses that have been interviewed and parties that entered into the Non-Disclosure Agreements; (vii) all parties that received a Preservation and Document Request Letter or Subpoena; (viii) the Office of the United States Trustee for Region 21: District of Puerto Rico; (ix) the Securities and Exchange Commission; (x) the Financial Industry Regulatory Authority; (xi) Oficina del Comisionado de Instituciones Financieras; (xii) the Internal Revenue Service; (xiii) the United States Attorney for the District of Puerto Rico; and (xiv) the Master Service List and any other party required to be served in accordance with the Case Management Order entered in the Title III Cases.

66. The Independent Investigator respectfully submits that such notice to these parties that may be affected by the Motion constitutes adequate and sufficient notice of the relief requested in the Motion and the entry of the Proposed Order and no other or further notice need be provided.

RESERVATION OF RIGHTS

67. The Independent Investigator seeks relief in the Title III Cases solely for purposes of this Motion. The Independent Investigator reserves all rights to seek any and all relief under Title I of PROMESA, and to have any matter related to its engagement, the Investigation, or the Final Report, and any other issue arising out of PROMESA, resolved under Title I of PROMESA, including in a separate proceeding that may be commenced in the United States District Court for the District of Puerto Rico under section 106(a) of PROMESA.

NO PRIOR REQUEST

68. No prior request for the relief requested in the Motion has been made by the Independent Investigator to this or any other court.

CONCLUSION

69. For all of the foregoing reasons, the relief sought under this Motion is in the public interest, necessary to enable the Independent Investigator to fulfill its duties and responsibilities under PROMESA, and provides a transparent, cost-effective, and efficient process for concluding the Investigation and publishing the Final Report.

WHEREFORE, based upon the foregoing, the Independent Investigator respectfully requests that the Court grant the Motion and enter an order, substantially in the form attached hereto as Exhibit A: (i) establishing procedures for resolving any confidentiality dispute in connection with publication of the Independent Investigator's Final Report; (ii) approving the disposition of certain documents and information; (iii) relieving the Independent Investigator from certain discovery obligations; (iv) exculpating the Independent Investigator in connection with the Investigation and publication of the Final Report; and (v) granting related relief as appropriate under the circumstances.

Dated: July 3, 2018
San Juan, Puerto Rico

/s/ D. Farrington Yates

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The Independent Investigator

-and-

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EXHIBIT A

Proposed Order

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re:	PROMESA
THE FINANCIAL OVERSIGHT AND	Title III
MANAGEMENT BOARD FOR PUERTO RICO,	No. 17 BK 3283-LTS
as representative of	(Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,	
Debtors. ¹	

-----X

**ORDER APPROVING MOTION OF THE INDEPENDENT INVESTIGATOR
FOR AN ORDER (I) ESTABLISHING PROCEDURES FOR RESOLVING
ANY CONFIDENTIALITY DISPUTE IN CONNECTION WITH PUBLICATION
OF THE INDEPENDENT INVESTIGATOR’S FINAL REPORT; (II) APPROVING
THE DISPOSITION OF DOCUMENTS AND INFORMATION; (III) RELIEVING
THE INDEPENDENT INVESTIGATOR FROM CERTAIN DISCOVERY
OBLIGATIONS; (IV) EXCULPATING THE INDEPENDENT INVESTIGATOR IN
CONNECTION WITH THE INVESTIGATION AND PUBLICATION
OF THE FINAL REPORT; AND (V) GRANTING RELATED RELIEF**

Upon the *Motion of the Independent Investigator for an Order: (I) Establishing Procedures for Resolving any Confidentiality Dispute in Connection with Publication of the Independent Investigator’s Final Report; (II) Approving the Disposition of Certain Documents and Information; (III) Relieving the Independent Investigator from Certain Discovery Obligations; (IV) Exculpating the Independent Investigator in Connection with the Investigation and Publication of the Final Report; and (V) Granting Related Relief* (the

¹ The debtors in these Title III Cases, along with each debtor’s respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each debtor’s federal tax identification number, as applicable, are the: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284(LTS)) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); and (iv) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747) (collectively, the “Debtors”).

“Motion”)²; and the Court having found it has subject matter jurisdiction over this matter under sections 106(a) and 306(a)(2) of PROMESA; and it appearing that venue is proper under sections 104(k), 106(a), and 307(a) of PROMESA; and the Court having found that the relief requested in the Motion is in the best interests of all parties in interest; and the Court having found that the Independent Investigator provided adequate and appropriate notice of the Motion under the circumstances and that no other or further notice is required; and the Court having reviewed the Motion and considered the Motion at a hearing held before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or are overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.

A. Procedures for Resolution of Any Objection to the Disclosure of Confidential Information in the Final Report

2. If any of the Non-Disclosure Agreements requires the Independent Investigator to provide advance notice of the publication of the Disclosing Party’s Confidential Information, the Independent Investigator shall follow the following procedures before the publication of the Disclosing Party’s Confidential Information in the Final Report:

- a. The Independent Investigator will provide a written notice, by *email or overnight delivery*, to each Disclosing Party identifying the Disclosing Party’s Confidential Information that the Independent Investigator may use in the Final Report at the latest five (5) business days before publication of the Final Report, unless the Non-Disclosure Agreement between the Independent Investigator and the Disclosing Party provides for a different period, in which case the Non-Disclosure Agreement’s different period will govern (the “Notice Period”). Any objection to the disclosure by the Independent Investigator of such Confidential Information must be transmitted by email or overnight mail to be *received* by the Independent Investigator within the Notice Period.
- b. During the Notice Period, the Disclosing Parties must: (i) hold the identity and content of any Confidential Information about which the Independent Investigator has given

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

notice in strict confidence (including any statement, finding, or conclusion of the Independent Investigator, or any portion of the Final Report, that is shared with the Disclosing Party in connection with the Publication Procedures) and (ii) make no disclosure to any person, except its counsel, of the identity or content of the Confidential Information that the Independent Investigator may use in the Final Report.

- c. If no objection is made within the Notice Period, any Disclosing Party shall be deemed to have waived any claim that such Confidential Information is entitled to non-disclosure, and the Independent Investigator may promptly publish the Final Report and any related exhibits disclosing such Confidential Information.
- d. If a Disclosing Party makes an objection within the Notice Period, the Disclosing Party must confer in good faith directly with the Independent Investigator to attempt to resolve its challenge concerning any of the Confidential Information identified by the Independent Investigator for inclusion in the Final Report. In conferring, the Disclosing Party must: (i) explain the basis for its belief that the inclusion of the Confidential Information in the Final Report is not proper and (ii) give the Independent Investigator an opportunity to (a) review the objection and the designated Confidential Information, (b) reconsider the designation, and (c) if no change in the designation is offered, to explain the basis for the designation. The Independent Investigator may respond by email or overnight mail to the Disclosing Party concerning the challenge within five (5) business days (the “Meet and Confer Procedure”).
- e. If any of the Disclosing Parties makes an objection within the Notice Period and such objection is not resolved under the Meet and Confer Procedure, the Disclosing Party must file with this Court and serve a motion for a protective order, on an expedited basis scheduled in compliance with the Case Management Order³, seeking to prohibit the public disclosure of the Confidential Information proposed to be included in the Final Report within five (5) business days of the conclusion of the Meet and Confer Procedure if it wishes to adhere to its objection (the “Motion for Protective Order”). Each such Motion for Protective Order must be accompanied by a declaration that affirms that the Disclosing Party has complied with the Meet and Confer Procedure. The burden of persuasion in any such Motion for Protective Order shall rest with the Disclosing Party asserting confidentiality and seeking to seal, redact, or prevent disclosure of the Final Report.
- f. No Confidential Information may be filed by any party with the Court unless (i) upon advanced written consent; or (ii) filed under seal under Local Bankruptcy Rule 9018-1 and the District Court’s Standing Order No. 9.
- g. The Independent Investigator shall maintain the confidentiality of such Confidential Information during the pendency of an objection and, if a Motion for Protective Order is filed, until the Court resolves the Motion for Protective Order. If the Independent Investigator publishes the Final Report during the pendency of an objection or Motion for Protective Order, the Independent Investigator must redact the applicable portions of the Final Report so as to preserve such Confidential Information.

³ See Order Further Amending Case Management Procedures dated April 4, 2018 entered by Judge Swain in the Debtors’ Title III Cases (ECF No. 2839).

- h. Nothing in the Publication Procedures shall limit the Independent Investigator's ability to file or publish all, or any portion of, the Final Report under seal or with redactions during, or in advance of, the Notice Period. Nothing in the Publication Procedures shall limit the ability of the Committees to seek access to information filed under seal or to object to the fact that certain information is filed under seal.

3. Nothing herein shall prevent or prejudice Disclosing Parties from seeking, pursuant to the procedures set forth herein, additional, lesser, or greater protections, with respect to the use or disclosure of their Confidential Information, than the protections set forth in their Non-Disclosure Agreements.

B. Disposition of Documents and Information

4. The Independent Investigator shall take necessary steps to facilitate the transfer of the Investigative Record and transition the custody of the Investigative Record to the Neutral Vendor, which shall be selected by the Special Investigation Committee.

5. The Neutral Vendor shall take custody and maintenance of the Document Depository for such period as required by law or as otherwise ordered by the Court, but at a minimum, until the effective date of a plan of adjustment for each of the Debtors confirmed by the Court.

6. Any transfer of the Investigative Record by the Independent Investigator to the Neutral Vendor is not, and shall not be deemed to be, a violation any obligation arising under a Non-Disclosure Agreement, or a waiver of any currently existing work-product, attorney-client privilege, or other privilege.

7. If there is any conflict or inconsistency between the terms of a Non-Disclosure Agreement and this Order, the terms of this Order shall control.

8. The Independent Investigator shall return to AAFAF all documents identified as "Highly Confidential" (i.e., asserted to be privileged) by AAFAF or GDB, unless such documents are included as Final Report Documents with the consent of AAFAF or GDB. All parties' rights to challenge or defend AAFAF's "Highly Confidential" designation are

reserved. AAFAF shall continue to maintain the Relativity Database until the conclusion of all Title III proceedings concerning the Commonwealth of Puerto Rico or any of its instrumentalities, unless ordered otherwise by further order of the Court. All parties' rights to seek access to or dispute access to the Relativity Database are reserved.

9. The Independent Investigator is authorized, in its sole discretion, to discard or delete (in case of electronic materials) all documents and information that has not been transferred to the Document Depository, including without limitation, the Independent Investigator's Privileged Materials.

C. Treatment of Government Agency Productions

10. Absent the SEC's consent or lack of objection, no documents provided by the SEC to the Independent Investigator shall be transferred to the Document Depository.

11. Absent FINRA's consent or lack of objection, no documents provided by FINRA to the Independent Investigator shall be transferred to the Document Depository.

12. Documents provided by OCIF to the Independent Investigator, including those provided by third parties to OCIF, shall be transferred to the Document Depository, except for one examination report that is confidential under Puerto Rico law.

D. Procedures to Access the Document Depository

13. Parties in interest who are not stayed or otherwise prohibited from seeking discovery by order of the Court or any other court of competent jurisdiction or applicable law may request access to documents contained in the Central Document Depository as follows:

- a. In the case of a request by a person or entity that is not a party to a pending civil litigation in a court of competent jurisdiction, a document request ("Document Request") must be served on the attorneys for the Oversight Board and forwarded to the Neutral Vendor. A Document Request shall not be filed with the Court. In the case of a request by a person or entity that is a party to a pending civil litigation, including the Oversight Board, a subpoena under Rule 45 of the Federal Rules of Civil Procedure or any other applicable rules ("Subpoena") shall be served in compliance with all rules governing notice and discovery in that litigation and shall also be served on attorneys for the Oversight Board to the extent the Oversight Board is not a named party to the litigation, and forwarded to the Neutral Vendor.

- b. Any Document Request or Subpoena must be accompanied by search terms and relevant time periods (the “Search Terms”), unless the Document Request or Subpoena seeks access to all documents contained in the Document Depository. Upon receipt of the Search Terms, the Neutral Vendor shall promptly apply them to the Document Depository to identify responsive documents and relevant producing parties (each, a “Producing Party”).
- c. After receipt of a Document Request or Subpoena and application of the Search Terms (as applicable), the Neutral Vendor shall promptly provide a notice to each Producing Party, setting out (i) the identity of the party making the request (the “Requesting Party”) and (ii) the Document Request or Subpoena, together with the Search Terms or a statement that all of the Producing Party’s documents have been requested by the Requesting Party (as applicable). The Neutral Vendor shall provide the Requesting Party and any other person or entity that has been served with notice of a Subpoena by the Requesting Party in accordance with paragraph 13(a) above, a copy of the Notice.
- d. The Oversight Board and the Producing Party (collectively, the “Interested Parties”) shall have ten (10) business days from the date of Notice to informally object to the Document Request and shall serve such objection on the Requesting Party and the other Interested Parties with a copy to the Neutral Vendor. An objection to a Document Request shall not be filed with the Court. If a timely objection to the Document Request is asserted, the objecting party or parties and the Requesting Party shall confer within ten (10) business days of the assertion of an objection in an effort to resolve the objection. If the objection cannot be resolved, the objecting party or parties may, within ten (10) additional business days, make a motion with the Court to be heard at the next omnibus hearing and in compliance with the Case Management Order⁴ governing the Debtors’ Title III Cases seeking an order restricting or prohibiting access to the requested documents, or for such other relief as may be appropriate. If such a motion is filed, the Neutral Vendor shall not comply with the Document Request pending the disposition of the motion. If no timely objection is asserted to a Document Request, or if no motion is filed within twenty (20) business days after assertion of an objection, the Neutral Vendor shall promptly make the requested documents available to the Requesting Party via a document production. Nothing herein shall confer standing on any party to object to a Document Request and all rights to contest, object to, or support standing of an objecting party are preserved.
- e. If any documents produced by the Neutral Vendor to the Requesting Party as set forth in paragraph 13(d) above have been previously marked as “Professional Eyes Only” or with similar designations, then absent a further court order, the Requesting Party shall abide by such designation.
- f. Objections to a Subpoena issued in a pending civil litigation shall be heard in that litigation and governed by the applicable rules of civil procedure and discovery in such litigation. Nothing herein shall confer standing on any party to object to a Subpoena and all rights to contest, object to, or support standing of an objecting party are preserved. Further, nothing herein shall provide a person or entity greater rights to

⁴ See Order Further Amending Case Management Procedures dated April 4, 2018 entered by Judge Swain in the Debtors’ Title III Cases (ECF No. 2839).

obtain documents or information from the Neutral Vendor or the Document Depository than such person or entity has under applicable law.

14. Nothing contained in this Order is intended to expand, contract, waive, or modify the rights of any party in interest or member of the public to seek access to one or more documents contained in the Document Depository. All rights possessed by the Oversight Board, the Debtors, the Disclosing Parties, or other parties in interest to object to or otherwise contest the propriety of any request for access to documents contained in the Document Depository are expressly reserved.

E. Assistance from the Independent Investigator after Publication of the Final Report

15. If, after publication of the Final Report, the Independent Investigator receives requests for cooperation and assistance from any party in interest, the Independent Investigator shall respond as follows:

- a. In response to requests from the Oversight Board, the Debtors, the Committees, Puerto Rico or federal agencies or regulators, or the United States Trustee, the Independent Investigator will meet and confer with such parties concerning their requests and provide cooperation and assistance until at least June 1, 2019, or confirmation of a plan of adjustment for the Title III Debtors, whichever is earlier, unless the engagement of the Independent Investigator by the Special Investigation Committee is terminated sooner.
- b. The Independent Investigator may provide such cooperation and assistance as the Special Investigation Committee deems appropriate in response to requests from other parties in interest; *provided* that, the requesting party shall provide notice of its request for cooperation and assistance to the Oversight Board, the Debtors, the Committees, and, in the event that the requesting party is a party to an existing civil litigation, the other parties to such litigation. Unless otherwise directed by the Oversight Board, acting by and through the Special Investigation Committee, the Independent Investigator will not respond to requests for cooperation or assistance from parties in interest other than those provided for in paragraph 15(a) above after June 1, 2019 unless the engagement of the Independent Investigator by the Special Investigation Committee is terminated sooner.

F. Relief from Discovery Obligations

16. The Independent Investigator is relieved from any requests for production of documents, requests for admissions, requests for testimony or deposition, interrogatories, subpoenas for production of documents, subpoenas to give oral testimony, trial subpoenas, or any other discovery of any kind relating to the Investigation or Final Report and no party shall issue or serve any discovery request upon the Independent Investigator, except with respect to: (i) documents for which a requesting party has demonstrated to the Court that it has been unable to obtain from any other source, after providing an affirmation to that effect; (ii) an order of a federal district court presiding over a criminal proceeding in which a party in interest is a defendant finding that the Independent Investigator is obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), as embodied in subsequent caselaw and the Federal Rules of Criminal Procedure; or (iii) productions required in response to any subpoena or formal request made by or on behalf of any state, federal or Puerto Rican governmental or regulatory agency acting under its police or regulatory powers.

G. Exemption from Liability for Claims under 48 U.S.C. § 2125

17. The immunity protections of 48 U.S.C. § 2125 shall apply to the Independent Investigator and its employees and agents with respect to any act, omission, statement, or representation arising out of, relating to, or involving in any way, the Investigation, the Non-Disclosure Agreements, the Interim Reports, and the Final Report, the Motion, and any pleading or other writing filed by the Independent Investigator in connection with the Investigation.

18. The Independent Investigator is authorized to take all actions, and to execute all documents, necessary or appropriate, to effectuate the relief granted in this order in accordance with the Motion.

19. In the event of a conflict between this Order and any provision of a plan of adjustment for any of the Debtors confirmed by the Court in the Title III Cases, this Order shall control as it pertains to the rights, obligations, duties, and responsibilities of the Independent Investigator and its employees and agents.

20. This Order shall survive confirmation of any plan of adjustment for any of the Debtors and dismissal of the Debtors' Title III Cases.

21. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: July __, 2018
San Juan, Puerto Rico

Honorable Laura Taylor Swain
United States District Judge

EXHIBIT B

**Order Governing the Production and Use of Confidential Material Among
the Examiner, the Official Committee of Unsecured Creditors, the Debtors,
and Non-Parties, *In re Enron Corp.*, Case No. 01-16034 (AJG)
(Bankr. S.D. N.Y. Oct. 10, 2002)**

In re: ENRON CORP., et al., Debtors., Not Reported in B.R. (2002)

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Only the Westlaw citation is currently available.
United States Bankruptcy Court, S.D. New York.

In re: ENRON CORP., et al., Debtors.

No. 01-16034 (AJG).

October 10, 2002.

ORDER GOVERNING THE PRODUCTION AND USE
OF CONFIDENTIAL MATERIAL AMONG THE
EXAMINER, THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS, THE DEBTORS AND
NON-PARTIES

s/Arthur J. Gonzalez United States Bankruptcy Judge.

***1** IT IS HEREBY ORDERED THAT the following order shall apply to third parties to whom Rule 2004 subpoenas are directed (the “Non-Party Producer”), Neal Batson, Esq., in his official capacity as Examiner (the “Examiner”), Enron Corp. and its affiliated debtors and debtors in possession (collectively “Enron” or “Debtors”), and the Official Committee of Unsecured Creditors of Enron Corp. (the “Committee” and collectively with the Debtors and the Examiner, the “Requesting Parties”) and all persons and entities who may be provided information covered by this Order, in the above-captioned Chapter 11 cases and any related proceedings (collectively, the “Matter”):

WHEREAS, Enron and certain of its affiliates and subsidiaries filed petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court of the Southern District of New York, commencing these Chapter 11 Cases on or about December 2, 2001; and

WHEREAS, on December 12, 2001, the United States Trustee appointed the Committee; and

WHEREAS, the Court entered an Order dated April 8, 2002 directing the appointment of an Examiner for the Debtors (the “Examiner Order”); and

WHEREAS, pursuant to the Examiner Order, the United States Trustee duly appointed the Examiner, Neal Batson,

Esq., which appointment was approved by an Order by the Court dated May 24, 2002; and

WHEREAS, the Examiner Order provides that the Examiner shall, among other things, investigate transactions involving special purpose entities (the “Examiner’s Investigation”); and

WHEREAS, the Committee is charged with investigating the Debtors’ assets and liabilities and the operation of their businesses, and participating in the formulation of the Debtors’ plan(s) of reorganization pursuant to [11 U.S.C. § 1103\(c\)](#) (the “Committee’s Investigation”); and

WHEREAS, the Debtors may investigate as necessary to carry out their duties and powers under [Bankruptcy Code section 1107\(a\)](#) (the “Debtors’ Investigation”) (collectively with the Examiner’s Investigation and the Committee’s Investigation the “Requesting Parties’ Investigation”); and

WHEREAS, the Requesting Parties have served or will serve a subpoena upon the Non-Party Producer requesting the production of documents related to the Requesting Parties’ Investigations; and

WHEREAS, the Requesting Parties may seek to investigate and examine documents from the same Non-Party Producers and, therefore, may issue subpoenas to the same Non-Party Producer; and

WHEREAS, the parties wish to avoid the unnecessary duplication of expense for both the Non-Party Producers and the Requesting Parties;

THEREFORE, IT IS HEREBY ORDERED:

1. This Order shall govern the designation and use by the Requesting Parties of any documents, testimony or other information designated as Confidential Information hereunder which were produced or provided or will in the future be produced or provided to the Requesting Parties by a Non-Party Producer (collectively, the “Materials”).

***2** 2. As used herein, “Confidential Information” shall include any Materials that are (i) deemed a trade secret or other confidential research, development, or commercial information as those terms are used in [Federal Rule of Bankruptcy Procedure 7026\(c\)\(7\)](#) or under any law, rule or regulation of any jurisdiction having or claiming to have jurisdiction over the Non-Party Producer or confidential under the laws of a jurisdiction whose laws apply to the Non-Party Producer or personal information;

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or (ii) as to producing law firms only, deemed an attorney-client privileged communication; or (iii) as to producing law firms only, deemed work product as defined under [Federal Rule of Bankruptcy Procedure 7026\(b\)\(3\)](#) or under applicable law or (iv) unrelated to the Requesting Parties' Investigation. The Non-Party Producer may designate as "Highly Confidential" any Confidential Information containing particularly confidential technology or other trade secrets whose disclosure to persons in the same industry would put it at a severe competitive disadvantage or that is otherwise particularly sensitive personal information. To the extent that the Requesting Parties should challenge in writing, delivered by fax or overnight delivery, the "confidential" or "highly confidential" designation of any Materials, the Non-Party Producer designating the Materials as "confidential" or "highly confidential" shall bear the burden of showing that the Materials are Confidential Information. Nothing in this Order is intended to modify the Examiner's power to waive the attorney-client privilege as set forth in the Examiner Order.

3. Confidential Information and Highly Confidential Information provided to the Requesting Parties shall be held in strict confidence by the Requesting Parties in accordance with the terms of this Order. Any Materials obtained by the Requesting Parties from a Non-Party Producer shall not be used or disclosed for any purpose, including any business or competitive purpose, other than the Requesting Parties' Investigation, as may hereafter be amended by the Court ("Permitted Use").

4. The Requesting Parties may disclose Confidential Information, but not Highly Confidential Information, only to each other and the following categories of persons or parties, provided that each person or party must be shown a copy of this Order and, where expressly required below, indicate its agreement to be bound by its terms by reviewing and executing the Agreement attached hereto as Addendum A:

(a) Counsel for the Requesting Parties and/or the employees of such counsel assigned to and necessary to assist such counsel in connection with the Requesting Parties' Investigation;

(b) Nonparty experts or consultants retained in good faith to assist the Requesting Parties in connection with the Requesting Parties' Investigation; *provided* that each such expert or consultant is provided with a copy of this Order and signs Addendum A attached hereto;

***3** (c) Officers or employees of the Requesting Parties who may be necessary to assist in the preparation and

conduct of the Requesting Parties' Investigation and who have been furnished with a copy of this Order prior to disclosure to such person of any Confidential Information;

(d) Court reporters, stenographers or video operators at depositions, court or arbitral proceedings at which Confidential Information is disclosed;

(e) Clerical and data processing personnel involved in the production, reproduction, organizing, filing, coding, cataloging, converting, storing, retrieving and review of Confidential Information, to the extent reasonably necessary to assist the Requesting Parties or its counsel with respect to the Requesting Parties' Investigation; provided that the primary contractor is provided with a copy of this Order and signs Addendum A attached hereto;

(f) The Honorable Arthur J. Gonzalez, Judge of the United States Bankruptcy Court for the Southern District of New York, and employees of the Court working in his chambers;

(g) By the Examiner to the public at large, solely to the extent discussed in or attached as exhibits to the Examiner's interim or final reports so long as prior to such use in any interim or final reports the Examiner provides advance written notice, by facsimile or overnight delivery, to the Non-Party Producer five (5) business days prior to the filing of any interim or final report identifying the Confidential Information the Examiner may use in a report to allow the Non-Party Producer to serve an objection within such five (5) day period, which objection shall be transmitted by facsimile to the Examiner's counsel. During the five (5) day review period, the Non-Party Producer shall hold the identity and content of the Confidential Information about which the Examiner has given notice in strict confidence and shall make no disclosure to any person, except counsel for or employees of the Non-Party Producer whose Materials the Examiner intends to disclose, of the identity or content of the Materials the Examiner has notified the Non-Party Producer he may use in a report. If the Non-Party Producer makes an objection, it must file with the Court a motion for a protective order seeking to prohibit the public disclosure of the Confidential Information proposed to be included in the Examiner's report within ten (10) business days of the making of the objection if it wishes to adhere to its objection. The Examiner shall maintain the confidentiality of such Confidential Information during the pendency of an objection and, if a motion for protective order is filed, until the Court resolves the motion for protective order. If the Examiner

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files a report during the pendency of an objection or motion for protective order, he shall file those portions of the report, or the entire report if more convenient, under seal to preserve such Confidential Information.

(h) Persons who are granted access pursuant to the terms of the March 15, 2002 Order Regarding Access by Third Parties to Bankruptcy Rule 2004 Material Obtained by the Official Committee of Unsecured Creditors (the "Rule 2004 Sharing Order") and sign Addendum A attached hereto.

*4 5. The Requesting Parties may disclose Confidential Information and Highly Confidential Information only to witnesses being questioned by the Requesting Parties in interviews given in connection with the Requesting Parties' Investigation and who sign Addendum A attached hereto and (i) have been provided with notice that the information being disclosed is Confidential Information or Highly Confidential Information, (ii) have been provided with a copy of this Order, and (iii) have been informed that Confidential Information or Highly Confidential Information is being disclosed to them pursuant to this Order. The Requesting Parties may show the Confidential Information or Highly Confidential Information to the witness, but Confidential Information and Highly Confidential Information may not be given to the witness.

6. The Requesting Parties may disclose Confidential Information and Highly Confidential Information only to witnesses being questioned by the Requesting Parties in depositions or in a court proceeding in connection with the Requesting Parties' Investigation (but not in adversary proceedings or other litigation outside the Matter) ("Court Proceeding") and who sign Addendum A attached hereto and (i) have been provided with notice that the information being disclosed is Confidential Information or Highly Confidential Information, (ii) have been provided with a copy of this Order, and (iii) have been informed upon the record of such testimony that Confidential Information or Highly Confidential Information is being disclosed to them pursuant to this Order. The Requesting Parties may show the Confidential Information to the witness, but Confidential Information or Highly Confidential Information may not be given to the witness. Within ten (10) business days of the receipt of a transcript of a deposition or a portion thereof, the Requesting Party who discloses Confidential Information or Highly Confidential Information must notify in writing by facsimile or overnight delivery the Non-Party Producer whose Confidential Information or Highly Confidential Information was disclosed. If a Requesting Party intends to use Confidential Information or Highly Confidential

Information at a deposition or a Court Proceeding, the Requesting Party who intends to use such information must provide two (2) days advance written notice delivered by facsimile of the deposition or Court Proceeding and the intent to use Confidential Information or Highly Confidential Information.

7. If Highly Confidential Information is used during a deposition, everyone but the following persons shall be excused from the deposition while the Highly Confidential Information is being used: (1) the Requesting Parties and their professionals; (2) the witness and his/her counsel; and (3) the Non-Party Producer whose Highly Confidential Information is being used and its counsel.

8. If Confidential Information is used during a deposition, the following persons shall be excused from the deposition while the Confidential Information is being used: (a) persons, other than Requesting Parties, in litigation with the Non-Party Producer; and (b) persons who have not signed Addendum A attached hereto.

*5 9. The Non-Party Producer may designate Confidential Information as "Confidential" or "Highly Confidential" by marking or stamping Materials (or the first page of a multi-page document provided that the document is securely bound) "Confidential" or "Highly Confidential," as the case may be. The Requesting Parties shall treat print-outs of any computer data so designated as Confidential Information or Highly Confidential Information in accordance with the terms of this Order. Failure to designate materials as Confidential Information or Highly Confidential Information at the time of their production may be remedied by supplemental written notice and, upon receiving such supplemental notice, the Requesting Parties shall thereafter treat the designated materials in accordance with the terms of this Order.

10. If the Requesting Parties use Confidential Information or Highly Confidential Information to question a witness in a deposition or during a Court Proceeding, the Requesting Parties shall within ten (10) business days after the receipt of the transcript of a deposition or a portion thereof, designate as Confidential Information or Highly Confidential Information each page of such transcript, including exhibits, that contains Confidential Information or Highly Confidential Information.

11. A Non-Party Producer may, on the record of a deposition or within ten (10) business days after receipt of each volume of transcript of a deposition, designate as Confidential Information or Highly Confidential Information each page of such transcript, including

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exhibits, that are Confidential Information or Highly Confidential Information under the terms of this Order. Until such time period expires, the entire volume of deposition transcripts shall be treated as Confidential Information or Highly Confidential Information unless otherwise specified in writing or on the record of the deposition by the Non-Party Producer so long as the Non-Party Producer requests the deposition transcript within ten (10) business days of the ten (10) day notice period provided in Paragraph 6.

12. If the Requesting Parties object to the designation of any Materials as Confidential Information or Highly Confidential Information, including but not limited to, documents, entire depositions, portions thereof and/or exhibits thereto, the Requesting Parties shall so state by letter to counsel for the Non-Party Producer. The Requesting Parties and counsel for the Non-Party Producer shall promptly confer, in good faith, to resolve any dispute concerning the designation and treatment of information as Confidential Information or Highly Confidential Information pursuant to the terms of this Order. In the event that the parties are unable to resolve any dispute concerning treatment of information as Confidential Information or Highly Confidential Information, the Requesting Party may file with the Court a motion challenging the designation. If such a motion is filed, the Non-Party Producer bears the burden of proving the material should be treated as Confidential Information or Highly Confidential Information. Pending determination of such motion, any information previously designated as Confidential Information or Highly Confidential Information shall continue to be treated in accordance with its original designation.

*6 13. The Requesting Parties may disclose Confidential Information designated Highly Confidential only to the attorneys and their staff and experts and heir staff of the Requesting Parties and witnesses and his or her counsel. Unless ordered by the Court or agreed by the Non-Party Producer, Highly Confidential Information shall not be made available to any other person or entity. If Highly Confidential Information is to be shown in an interview pursuant to Paragraph 5 of this Order to someone other than the author or recipient of the Highly Confidential Information or to someone other than a person employed by the author or recipient's employer, then the person who intends to make disclosure shall give notice of the proposed disclosure to outside counsel of record for the Non-Party Producer that produced the Highly Confidential Information one business day before the interview, who shall hold the information on an attorney's eyes only basis.

14. This Order is intended to limit production of Confidential Information or Highly Confidential Information to the Requesting Parties and to limit disclosure by them only to the extent and in the manner provided herein. In the event that the Requesting Parties are requested or required by any person or entity (by law, oral questions, government action, interrogatories, requests for information or Materials, subpoena, civil investigative demand or similar process) to provide or produce Confidential Information or Highly Confidential Information supplied to the Requesting Parties by the Non-Party Producer, the Requesting Parties shall, unless prohibited from doing so by applicable law, give counsel to the relevant Non-Party Producer who provided the Confidential Information or Highly Confidential Information prompt written notice as soon as practicable, but no less than, five (5) days in advance of the deadline for filing objections so that the Non-Party Producer has an opportunity to object to production. The Requesting Parties shall not disclose the Confidential Information or Highly Confidential Information unless the Non-Party Producer's objections are overruled and a court orders production. Other than the giving of notice to the Non-Party Producer, the Requesting Parties have no obligation to resist the request for Confidential Information.

15. This Order has no effect upon, and its scope shall not extend to, the Non-Party Producer's use of its own Confidential Information or Highly Confidential Information for any purpose; nor does this Order affect the terms of the Non-Party Producer's respective stipulations and/or orders regarding confidentiality with persons other than the Requesting Parties.

16. Nothing herein shall prevent or prejudice any party from seeking additional, lessor or greater protection with respect to the use or disclosure of Confidential Information or Highly Confidential Information.

17. If, after having produced material to the Requesting Parties pursuant to this Order, the Non-Party Producer states in writing that material was privileged and/or produced in error, the Requesting Parties will not assert that the fact of production of the material constitutes a waiver of any right, privilege, or other protection that the Non-Party Producer had or may have had as to the material and shall return the material and all copies thereof and destroy that portion of any notes or memoranda that reflect the substance of the document. In the event of such inadvertent production, upon challenge by the Requesting Parties, the Non-Party Producer asserting the privilege, protection and/or error, shall have the burden to establish that the material is non-responsive

In re: ENRON CORP., et al., Debtors., Not Reported in B.R. (2002)

2002 WL 32156065

and/or otherwise protected by motion to the Court. If the Requesting Parties challenge the Non-Party Producer's claim of inadvertent production, the Non-Party Producer shall file a motion with the Court within ten (10) business days of the Requesting Parties' challenge seeking a ruling that the Materials at issue were produced inadvertently and the Requesting Parties are not entitled to use them in connection with their Investigations. The Requesting Parties shall maintain the confidentiality of the Confidential Information or Highly Confidential Information until the court resolves the motion and, during its pendency, the Requesting Parties shall not use the Confidential Information or Highly Confidential Information.

*7 18. Upon the entry of a final decree closing the last of these jointly administered cases (a "Final Decree"), the provisions of this Order shall remain in effect.

19. All Materials and copies thereof shall be returned or destroyed at the Requesting Parties' election within forty-five (45) days of the entry of a Final Decree.

20. Nothing herein shall be construed to require the production by any party of any Materials including any Materials covered by otherwise valid and applicable privilege, including privileges from disclosure arising under the laws, rules and regulations of foreign jurisdictions.

21. All notices which may or are required to be given to the Requesting Parties shall be given to the following:

If to the Examiner, to:

James C. Grant

Alston & Bird, LLP

1201 West Peachtree Street

Atlanta, GA 30309

Fax: 404.881.7777

If to the Committee, to:

Philomena M. Dane

Squire, Sanders & Dempsey, L.L.P.

1300 Huntington Center

41 South High Street

Columbus, OH 43215-6197

Fax: 614.365.2499

If to the Debtors, to:

Brian S. Rosen

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Fax: 212.310.8007

22. Within ten (10) days after the entry of this Order, all Non-Party Producers shall provide notice to the Requesting Parties of the name, address and fax number of not more than three (3) people on whom all notices which may or are required to be given to such Non-Party Producer under this Order shall be given. Notice given by a Requesting Party to such persons identified by a Non-Party Producer shall satisfy such Requesting Party's notice obligations hereunder.

23. The Requesting Parties shall file a motion seeking to amend the Rule 2004 Sharing Order to the extent necessary to effectuate the provisions of this Order.

IT IS SO ORDERED:

Appendix not available.

All Citations

Not Reported in B.R., 2002 WL 32156065

End of Document

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EXHIBIT C

Order to Establish a Procedure to Unseal the Examiner's Report, to Establish a Briefing Schedule to Resolve Remaining Confidentiality Issues, and to Establish a Procedure to Provide Access to Documents Cited in the Examiner's Report, *In re Lehman Brothers Holdings, Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Mar. 11, 2010)

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

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	:
In re	:
	:
LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i> ,	:
	:
Debtors.	:
-----X	

Chapter 11
Case No. 08-13555 (JMP)
(Jointly Administered)

**ORDER TO ESTABLISH A PROCEDURE TO UNSEAL THE EXAMINER’S REPORT,
TO ESTABLISH A BRIEFING SCHEDULE TO RESOLVE REMAINING
CONFIDENTIALITY ISSUES, AND TO ESTABLISH A PROCEDURE TO PROVIDE
ACCESS TO DOCUMENTS CITED IN THE EXAMINER’S REPORT**

Upon the Examiner’s Motion to Establish Procedures to Unseal the Examiner’s Report (the “Motion”) and related documents filed by parties in interest; a hearing on the Motion held on March 11, 2010 upon due notice; the Court having heard and considered all comments made by parties in interest to the Motion; and the Court being satisfied that: (a) on February 8, 2010, the Examiner filed under seal the report of his investigation and appendices thereto (collectively, the “Report”); (b) the Examiner has previously notified interested persons that the Report may reference information that such persons may claim to be entitled to non-disclosure (the “Identified Information”); (c) the Court established a deadline of 4:00 p.m. on March 4, 2010 for parties to file objections to the Motion; (d) no substantive objections to the Motion were filed, although certain parties filed statements in support of the Examiner’s Motion and other parties filed responses reserving rights and proposing alternative procedures for determining whether and to what extent materials in and supporting the Report may be kept confidential; (e) by letter to the Court on March 9, 2010, counsel to the Examiner reported that of 3,158 documents cited in the Report, the Examiner was able to resolve confidentiality issues as to all but five documents (the “Disputed Documents”) that consist of seven pages produced by the CME Group and that concern only a few

pages of the 2,200-page Report; (f) in order to resolve confidentiality issues other than those interposed by the CME Group, the Examiner agreed to redactions in the underlying documents and the description of those documents in the Report to eliminate disclosure of sensitive personal or proprietary information where the Examiner determined that the information has no relevance to his Report; (g) the redactions, though limited, alter the Report as currently filed under seal; (h) the Examiner therefore sought leave to withdraw the Report as filed on February 8, 2010, and substitute a final Report that was presented to the Court at the hearing on the Motion on March 11, 2010; (i) the Report to be substituted contains redactions in accordance with the agreements by the Examiner as well as corrections of clerical errors in the Report filed on February 8, 2010 that the Examiner has identified in the course of reviewing possible redactions with interested parties; and (j) that due and proper notice of the Motion has been provided in accordance with the procedures set forth in the amended order entered in the above-captioned cases on February 13, 2009 governing case management and administrative procedures [Docket No. 2837] to (i) counsel for the Debtors; (ii) the U.S. Trustee; (iii) counsel to the Official Committee of Unsecured Creditors; (iv) parties producing documents to the Examiner (“Producing Parties” or “Producing Party”); (v) the Securities and Exchange Commission; (vi) the Internal Revenue Service; (vii) the United States Attorney for the Southern District of New York; (viii) the United States Attorney for the Eastern District of New York; (ix) the United States Attorney for the District of New Jersey; (x) persons who have identified themselves to the Examiner as having a particularized interest in the subject matter of the Motion; and (xi) all parties who have requested notice in these chapter 11 cases; and it appearing that no other or further notice of the Motion need be provided; and after due deliberation and sufficient cause appearing therefor;

It is hereby ORDERED:

1. The Motion is granted as set forth herein.
2. The following procedure with respect to unsealing the Examiner's Report shall be followed:
 - A. Any person who has received notice of the Motion (other than the CME Group) shall be deemed to have waived any claim that the Identified Information should prevent public release of the Report;
 - B. The Examiner is authorized to substitute the Report dated March 11, 2010 for the Report originally filed on February 8, 2010, which substituted Report will be filed under seal;
 - C. The Examiner is authorized to file on this Court's docket and make available to the public the substituted Report dated March 11, 2010 with additional redactions of those portions of the Report respecting the CME Group that derive from the Disputed Documents;
 - D. The CME Group, which has interposed an objection to the unsealing of that portion of the Report deriving from the Disputed Documents on the ground that some or all of its identified information is confidential or privileged, shall file that objection on or before March 19, 2010 at 5:00 p.m. (Prevailing Eastern Time) and provide a copy to the Examiner;
 - E. The CME Group objection shall specify the basis for a claim of privilege or confidentiality with particularity sufficient for the Court to determine the validity of the claim;
 - F. If the CME Group in good faith deems it appropriate to file its objection under seal, in order to provide particularity, it may do so without further leave of this Court,

provided that the Examiner is given an unredacted copy of the objection; the CME Group shall simultaneously file a “public version” of its objection, with redactions to be made on a good-faith basis, pursuant to the limited exceptions to disclosure set forth in 11.U.S.C. Sections 107(b) and (c);

G. The Examiner and any other party that wishes to respond should file its response to the CME Group objection on or before March 25, 2010 at 5:00 p.m. (Prevailing Eastern Time); and

H. A further hearing on the CME Group objections shall be held on April 14, 2010 at 10:00 a.m. (Prevailing Eastern Time).

3. The following procedure shall be followed with respect to making publicly available the documents cited in the Report (the “Underlying Documents”):

A. Although no persons other than the CME Group continue to object to disclosure of the Identified Information in the Report itself, some persons have not waived their right to object to the public disclosure of the Underlying Documents.

B. Any person who objects to making publicly available an Underlying Document on the ground that some or all of the Identified Information contained therein is confidential or privileged shall file that objection on or before March 25, 2010 at 5:00 p.m. (Prevailing Eastern Time);

C. Any such objection shall specify the basis for a claim of privilege or confidentiality with particularity sufficient for the Court to determine the validity of the claim;

D. If any Producing Party in good faith deems it appropriate to file its objection under seal in order to provide particularity, it may do so without further leave of Court, provided that the Examiner is given an unredacted copy of the objection;

- E. Any other objection to making publicly available the Underlying Documents should be filed on or before March 25, 2010 at 5:00 p.m. (Prevailing Eastern Time);
- F. In the absence of a timely objection, any person who has received notice of this Order and the Motion shall be deemed to have waived any claim that the Underlying Document is entitled to non-disclosure;
- G. After receiving objections, the Examiner will continue to work toward an agreed resolution, but the Examiner, and any other party that wishes to do so, may file a response to the objections on or before April 1, 2010 at 5:00 p.m. (Prevailing Eastern Time). At the Examiner's discretion, the response may consist of directing the Court to the relevant sections of the Report and supplying copies of the relevant documents *in camera*. A further hearing on any remaining objections to making publicly available any of the Underlying Documents shall be held on April 14, 2010 at 10:00 a.m. (Prevailing Eastern Time); and
- H. Once all objections are finally resolved, as soon as practicable:
 - a. If one or more Underlying Documents are found to be entitled to non-disclosure, the Examiner will redact that material and publicly make available a redacted version of the Underlying Document as so redacted; and if no non-disclosure issues remain, the Examiner will make such Underlying Document publicly available; and
 - b. The Examiner shall advise the Court on or before April 14, 2010 of the arrangements for making the Underlying Documents publicly available.

4. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: March 11, 2010
New York, New York

/s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT D

**Order Approving Examiner's Motion for Entry of Order Granting
Discharge from Duties, Relief from Discovery, Approval of Disposition of
Investigative Materials, and Exculpation in Connection with Duties, *In re*
Residential Capital, LLC, Case No. 12-12020 (MG)
(Bankr. S.D.N.Y. Sept. 24, 2013)**

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

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In re:	: Chapter 11
	:
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> , ¹	: Case No. 12-12020 (MG)
	:
Debtors.	: Jointly Administered
-----	X

**ORDER APPROVING EXAMINER'S MOTION FOR ENTRY OF
ORDER GRANTING DISCHARGE FROM DUTIES,
RELIEF FROM DISCOVERY, APPROVAL OF DISPOSITION OF
INVESTIGATIVE MATERIALS, AND
EXCULPATION IN CONNECTION WITH DUTIES**

Upon the motion (the "Motion")² of Arthur J. Gonzalez, the Court-appointed Examiner (the "Examiner") for Residential Capital, LLC and its affiliated debtors (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases"), pursuant to 11 U.S.C. §§ 105(a), 1106(a)(3)-(4), 1106(b), 1109(b), for the entry of an order granting the Examiner and his professionals Chadbourne & Parke LLP, Mesirow Financial Consulting, LLC, Wolf Haldenstein Adler Freeman & Herz LLP, and Leonard, Street and Deinard Professional Association (collectively, "Professionals") various forms of relief; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration

¹ The names of the Debtors in these cases and their respective tax identification numbers are identified on Exhibit 1 to the Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital, LLC, in Support of Chapter 11 Petitions and First Day Pleadings, filed with the Court on May 14, 2012. Additional subsidiaries and affiliates of the Debtors may file Chapter 11 petitions on a rolling basis. As used herein, the term "Debtors" includes any such entities.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); venue being proper before this Court; and after due deliberation, and good and sufficient cause appearing therefor; it is hereby:

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that effective as of the date of this Order, the appointment of the Examiner shall be terminated. The Examiner and his Professionals are discharged from any further obligations, duties, commitments and responsibilities under the Scope Order, pursuant to other directions of the Court, or otherwise in the Chapter 11 Cases, except as specifically provided for in this Order; and it is further

ORDERED that the Examiner and his Professionals are relieved from any duty to respond, object or move for a protective order in response to any formal or informal discovery requests issued by any party, including but not limited to any subpoenas, requests for production of documents, requests for admissions, interrogatories, requests for testimony (through subpoena, notice of deposition, request for Bankruptcy Rule 2004 examination, or otherwise), letters rogatory, or any other discovery of any kind related to the Chapter 11 Cases, the Examiner Investigation and/or the Examiner Report. This prohibition against discovery shall not apply to (i) requests for documents, materials, or information that the requesting party has demonstrated to this Court, upon notice to and an opportunity to object by the Examiner and/or his Professionals, cannot be obtained from any other source and that can be reasonably provided by the Examiner and/or his Professionals, so long as such requests do not seek production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege, protection or immunity, (ii) production required in response to an order of a federal district court presiding over a criminal proceeding in which a party-in-interest is a

defendant, which finds that the Examiner or his Professionals are obliged to produce documents or other materials to said defendant under the principles of Brady v. Maryland, 373 U.S. 83 (1963), as embodied in subsequent case law and the Federal Rules of Criminal Procedure, and (iii) any claims, suits, actions or other proceedings by or on behalf of the United States of America, its agencies, departments, or agents (collectively, the “United States”), acting pursuant to its police or regulatory powers. However, the Examiner and his Professionals shall retain any and all rights, claims, defenses, and objections to oppose any such request for discovery pursuant to these exceptions and shall be entitled to reimbursement of any fees and expenses incurred (including professional fees and expenses) in objecting to, opposing or otherwise responding to any such discovery request; and it is further

ORDERED that the Examiner and his Professionals are authorized to transfer the Document Depository to the Debtors, who shall preserve the Document Depository from the date of such transfer until further Order of this Court, and the Examiner and his Professionals shall not be responsible for any ongoing duties or costs associated with maintenance and administration of the Document Depository; and it is further

ORDERED that the Examiner and his Professionals shall be required to preserve, from among the materials generated or obtained by them in connection with the Examiner Investigation, only witness interview transcripts and recordings, for a period of two years from the date of entry of this Order or until further ordered by the Court; and it is further

ORDERED that none of the Examiner, the Professionals, or any of their respective officers, directors, managers, equity holders, employees, agents, representatives, advisors, attorneys, or successors and assigns shall have or incur any liability with respect to any act, statement, representation, omission, pleading, report or writing arising out of, relating to, or

involving the Examiner's role as Examiner, the Examiner Investigation, the Examiner Report, the Document Depository, or arising out of, relating to, or involving the Chapter 11 Cases to the extent related to the foregoing. Nothing in this paragraph, however, shall be construed to limit the liability of the Examiner or his Professionals for any acts of willful misconduct, recklessness, or gross negligence as finally determined by a court of competent jurisdiction; and it is further

ORDERED that nothing in this Order shall be construed to bar any claims, suits, actions, or other proceedings by or on behalf of the United States pursuant to its police or regulatory powers; and it is further

ORDERED that this Court shall retain jurisdiction to resolve professional compensation issues for the Examiner or his Professionals in connection with the Chapter 11 Cases; and it is further

ORDERED that the Examiner and his Professionals shall file final applications for compensation and reimbursement of expenses incurred prior to the entry of this Order, as well as interim applications for compensation and reimbursement of expenses, if the Examiner so chooses; and it is further

ORDERED that nothing in this Order shall be construed to bar the United States Trustee from fulfilling her duties pursuant to 28 U.S.C. § 586, including, but not limited to her review of applications for compensation and reimbursement of expenses pursuant to any applicable provision of the Bankruptcy Code; and it is further

ORDERED that the Examiner and his Professionals shall be entitled to reimbursement of any reasonable fees and expenses (including professional fees and expenses) in connection with any cooperation, assistance, responses (to discovery requests or otherwise), or other services they provide pursuant to or relating to this Order, which reimbursement shall be

sought pursuant to an application to the Court for services performed prior to the effective date of any plan of reorganization; and it is further

ORDERED that in the event of a conflict between this Order and any provision of a plan of reorganization confirmed in the Chapter 11 Cases, this Order shall control as it pertains to the rights, obligations, duties, commitments, and responsibilities of the Examiner and his Professionals, and that this Order shall survive confirmation of any plan in the Chapter 11 Cases; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order, including its implementation, interpretation, enforcement, or requested modification.

SO ORDERED.

Dated: September 24, 2013
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

EXHIBIT E

**Order Discharging Examiner and Granting Related Relief, *In re Lehman
Brothers Holdings, Inc.*, Case No. 08-13555 (JMP)
(Bankr. S.D.N.Y. July 13, 2010)**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
LEHMAN BROTHERS HOLDINGS INC., <u>et al.</u>	:	Case No. 08-13555 (JMP)
	:	
Debtors.	:	(Jointly Administered)
-----X		

**ORDER DISCHARGING EXAMINER
AND GRANTING RELATED RELIEF**

Upon consideration of the Motion of Anton R. Valukas, Bankruptcy Court Examiner, by and through his attorneys, Jenner & Block LLP, for an Order discharging him as Examiner, and after due deliberation and sufficient cause appearing,

IT IS ORDERED as follows:

1. The Motion is granted, the appointment of Anton R. Valukas is terminated; and the Examiner and his professionals are discharged from any further obligations, duties, or responsibilities except as otherwise set forth in this Order. Subject to paragraph 4 below:
 - a. If requested, the Examiner and his professionals may continue to provide such cooperation and assistance as he in his discretion deems appropriate to government agencies and the United States Trustee.
 - b. If requested, the Examiner and his professionals may continue to provide such cooperation and assistance as he in his discretion deems appropriate to the

Debtors, the official committee of unsecured creditors appointed in these cases (the “Creditors’ Committee”) and James W. Giddens, SIPA Trustee for the Liquidation of the Business of Lehman Brothers Inc. (the “SIPA Trustee”).

- c. If other parties request cooperation or assistance from the Examiner and his professionals and such requesting parties are not parties to a pending civil litigation, the Examiner shall give written notice to the attorneys for the Debtors, Weil, Gotshal & Manges LLP, and the Creditors’ Committee, Milbank, Tweed, Hadley & McCloy LLP, and any other party in interest that makes a written request of the Examiner for notice of all such requests for cooperation or assistance from the Examiner. The Debtors, the Creditors’ Committee and any party that has requested notice of requests for cooperation or assistance of the Examiner may, within five business days of receipt of such notice, informally object to such request. If an objection is asserted, the parties shall confer within five business days of the assertion of such objection in an effort to resolve the objection. If the objection cannot be resolved, the objecting party or parties may, within five additional business days, make a motion with the Court to be heard at the next omnibus hearing and in compliance with the case management order governing the Debtors’ cases seeking an order prohibiting or limiting the scope of the requested cooperation or assistance from the Examiner and his professionals, or for such other relief as may be appropriate. If such a motion is filed, the Examiner

shall not provide the requested cooperation or assistance pending the disposition of the motion. If no objection is asserted within five business days of receipt of the notice, or if no motion is filed within ten business days after assertion of an objection, the Examiner and his professionals may provide such cooperation and assistance as he in his discretion deems appropriate.

- d. Notwithstanding anything herein to the contrary, if a party to a pending civil litigation, including the Debtors, the Creditors' Committee and the SIPA Trustee, requests cooperation and assistance from the Examiner relating to, concerning or involving that litigation, the Examiner shall give written notice to all other parties to such litigation and the Debtors and the Creditors' Committee to the extent either the Debtors or the Creditors' Committee is not a named party to the litigation. Any such party may, within five business days of receipt of such notice, informally object to such request. If an objection is asserted, the parties shall confer within five business days of the assertion of such objection in an effort to resolve the objection. If the objection cannot be resolved, the objecting party or parties may, within five additional business days, make a motion with the Court to be heard at the next omnibus hearing and in compliance with the case management order governing the Debtors' cases or in the court where such litigation is pending in accordance with the rules governing notice and discovery in that litigation seeking an order prohibiting or limiting the scope of the requested cooperation or assistance from

the Examiner and his professionals, or for such other relief as may be appropriate.

If such a motion is filed, the Examiner shall not provide the requested cooperation or assistance pending the disposition of the motion. If no objection is asserted within five business days of receipt of the notice, or if no motion is filed within ten business days after assertion of an objection, the Examiner and his professionals may provide such cooperation and assistance as he in his discretion deems appropriate.

- e. The Examiner and his professionals shall perform any and all acts necessary to transition the maintenance of the CaseLogistix database of documents he has assembled to a neutral vendor as more fully described in paragraph 6 of this Order.
- 2. The Examiner and his professionals are released from any and all liability with respect to any act or omission, statement, or representation arising out of, relating to, or involving in any way, the Investigation or any report, pleading, or other writing filed by the Examiner in connection with the bankruptcy cases, except in the case of gross negligence or willful misconduct.
- 3. The Examiner and his professionals are relieved from any formal or informal discovery process and no party shall issue or serve any discovery request upon the Examiner or his professionals, except as authorized (a) by this Court or another court of competent jurisdiction where litigation is pending upon notice of

motion to, and an opportunity to object by, the Examiner, the Debtors, the Creditors' Committee and parties in interest and demonstration by the requesting party that such materials or information cannot be reasonably obtained from any other source or for other cause shown, or (b) by an order of a federal district court presiding over a criminal proceeding in which a party in interest is a defendant finding that the Examiner or his professionals are obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), as embodied in subsequent caselaw and the Federal Rules of Criminal Procedure. The prohibition against discovery from the Examiner shall not prevent the discovery of information related to compensation applications filed by the Examiner or his professionals. The Examiner and his professionals shall maintain all materials currently in their possession related to their work on behalf of the Examiner until further order of the Court, upon notice and an opportunity to be heard by parties in interest, or until the closing of these Chapter 11 cases.

4. The Examiner and his professionals shall be entitled to reimbursement by the Debtors of any reasonable fees and expenses incurred (including professional fees and expenses) in connection with (i) any cooperation, assistance, or transition services they provide to the Debtors, the Creditors' Committee, government agencies or the United States Trustee pursuant to this Order, (ii)

objecting to, opposing, or otherwise responding to any request for formal discovery pursuant to paragraph 3 of this Order, or (iii) an application or motion for allowance and payment of fees and expenses payable by the Debtors. All fees of and expenses incurred by the Examiner and his professionals in connection with any cooperation or assistance provided to a party other than the Debtors, the Creditors' Committee, government agencies or the United States Trustee pursuant to this Order or in objecting to, opposing, or otherwise responding to any request for discovery by such party that is outside the scope of paragraph 3 of this Order shall be paid by, and shall be the sole and exclusive obligation of, such party. To the extent that the Examiner and his professionals' fees and expenses are payable by the Debtors and do not exceed \$150,000 per month, the Examiner and his professionals may submit invoices to the Debtors and the Creditors' Committee, with notice to the United States Trustee and an opportunity to object. Such invoices shall be reasonably detailed, shall indicate the nature of the services rendered and shall be calculated in accordance with the billing practices employed by the Examiner and his professionals in this case. Absent any objection or dispute, the Debtors shall be authorized to pay such invoices without further order of the Court. In the event that the Debtors dispute any such invoice, the Examiner and his professionals may request, by motion, that such disputed fees or expenses be

approved by this Court and shall not be required to file a fee application therefor. In the event that fees and expenses payable by the Debtors exceed \$150,000 in any month, a fee application shall be filed and considered in accordance with the procedures established in these cases. Nothing herein shall abrogate the obligation of the Examiner and his professionals to file applications for final allowances of compensation and reimbursement of expenses incurred prior to the entry of this Order or limit the rights of any party in interest to contest or otherwise object to such applications.

5. The Debtors shall continue to maintain the Stratify database of documents, in its current format, in the interests of the administration of the chapter 11 cases until further order of the Court, upon notice and an opportunity to be heard by parties in interest.
6. The Examiner is authorized to join with the Debtors to negotiate a contract between the Debtors and Epiq Bankruptcy Solutions LLC ("Epiq") or another comparable, neutral vendor, under which the selected vendor will take custody and maintenance of the documents contained in the CaseLogistix database assembled by the Examiner. The vendor's reasonable charges shall be paid by Debtors as an administrative expense of the Debtors.
7. Parties in interest who are not stayed or otherwise prohibited from seeking discovery by order of the Court or any other court of competent jurisdiction or

applicable law may request access to documents contained in the CaseLogistix database as follows:

- a. In the case of a request by a person or entity that is not a party to a pending civil litigation in a court of competent jurisdiction, a document request (“Document Request”) must be served on the attorneys for the Debtors and the Creditors’ Committee and forwarded to the vendor. A Document Request shall not be filed with the Court. In the case of a request by a person or entity that is a party to such a pending civil litigation, including the Debtors, the Creditors’ Committee and the SIPA Trustee, a subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure or any other applicable rules (“Subpoena”) shall be served in compliance with all rules governing notice and discovery in that litigation and shall also be served on attorneys for the Debtors and the Creditors’ Committee to the extent either the Debtors or the Creditors’ Committee is not a named party to the litigation and forwarded to the vendor.
- b. The vendor shall promptly identify responsive documents by producing party. The vendor shall then provide notice (“Notice”) to each identified producing party setting out the Document Request or Subpoena, the identity of the party making the request (the “Requesting Party”) and the specific documents that have been identified as responsive to the Document Request or Subpoena; the vendor shall provide to the Debtors, the Creditors’ Committee, the Requesting Party and any

other person or entity that has been served with notice of a Subpoena by the Requesting Party in accordance with paragraph 7(a) above, a copy of the Notice that includes a schedule of responsive documents, but shall not attach or provide copies of any specific documents.

- c. The Debtors, the Creditors' Committee and the producing party (collectively, the "Interested Parties") shall have five business days from the date of Notice to informally object to the Document Request and shall serve such objection on the Requesting Party and the other Interested Parties with a copy to the vendor. An objection to a Document Request shall not be filed with the Court. If a timely objection to the Document Request is asserted, the objecting party or parties and the Requesting Party shall confer within five business days of the assertion of an objection in an effort to resolve the objection. If the objection cannot be resolved, the objecting party or parties may, within five additional business days, make a motion with the Court to be heard at the next omnibus hearing and in compliance with the case management order governing the Debtors' cases seeking an order restricting or prohibiting access to the requested documents, or for such other relief as may be appropriate. If such a motion is filed, the vendor shall not comply with the Document Request pending the disposition of the motion. If no timely objection is asserted to a Document Request, or if no motion is filed within ten business days after assertion of an objection, the vendor shall promptly make the

requested documents available to the Requesting Party on a separate, publicly available platform. Nothing herein shall confer standing on any party to object to a Document Request and all rights to contest, object to or support standing of an objecting party are preserved.

- d. Objections to a Subpoena issued in a pending civil litigation shall be heard in that litigation and governed by the applicable rules of civil procedure and discovery in such litigation. Nothing herein shall confer standing on any party to object to a Subpoena and all rights to contest, object to or support standing of an objecting party are preserved.
- e. Notwithstanding anything herein to the contrary, the Debtors, the Creditors' Committee and the SIPA Trustee may request access to documents contained in the CaseLogistix database that do not relate to, concern or involve a pending civil litigation to which the Debtors, the Creditors' Committee or the SIPA Trustee are a party by providing a Document Request directly to the vendor. Prior notice to, and an opportunity to object to such a Document Request by, the Debtors or the Creditors' Committee shall not be required; *provided, however*, that, in all cases, the producing party or parties must be notified of and given an opportunity to object to the Document Request in accordance with provisions of paragraph 7 of this Order. A Document Request made by the Debtors, the Creditors' Committee or the SIPA Trustee shall not be filed with the Court. All requests by the Debtors, the

Creditors' Committee or the SIPA Trustee for documents contained in the CaseLogistix database relating to, concerning or involving a pending civil litigation to which the Debtors, the Creditors' Committee or the SIPA Trustee is a party shall be made by Subpoena and shall comply with the provisions of this paragraph 7 governing Subpoenas.

- f. For the avoidance of doubt, nothing in this paragraph 7 is intended to expand, contract, waive or otherwise modify the rights of any party in interest to seek discovery in these cases or in any pending litigation. All rights possessed by the Debtors, the Creditors' Committee, or other parties in interest to object to or otherwise contest the propriety of any party or parties in interest to request access to documents contained in the CaseLogistix database are expressly reserved.

Dated: New York, New York
July 13, 2010

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT F

**Order Discharging Examiner and Establishing Related Procedures, *In re*
Refco Inc., Case No. 05-6006 (RDD) (Bankr. S.D.N.Y. Aug. 16, 2007)
(Docket No. 5748)**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	§	Chapter 11
REFCO INC., <i>et al.</i>	§	Case No. 05-60006 (RDD)
Debtors.	§	Jointly Administered
	§	
	§	

Order Discharging Examiner and Establishing Related Procedures

This matter came before the Court for hearing on August 14, 2007 (the “Hearing”) on the Motion of Examiner for Order Discharging Examiner and Establishing Related Procedures (Docket No. 5632) (“Motion”); the Court having considered the Motion and the limited objection thereto and the arguments of counsel and the representations set forth on the record of the Hearing by counsel for the Litigation Trustee¹; the Court having jurisdiction over this matter in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court By Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); consideration of the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; the Court having determined that the relief sought in the Motion is in the best interests of the Debtors’ estates; the Court having determined that the legal and factual bases set forth in the Motion and articulated by counsel at the Hearing establish cause for the relief granted herein; and after due deliberation, and sufficient cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted except to the extent otherwise provided in this Order.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. Effective as of the date of this Order, the Examiner and the Examiner's Counsel are discharged from any further obligations, duties, or responsibilities under the Examiner Appointment Order (Docket No. 1487), pursuant to other directions of the Court given at the hearing held in this case on June 21, 2006, or otherwise in these cases, except as specifically provided for in this Order.

3. The Examiner is authorized to, and shall, provide to the Litigation Trustee (as defined in the Modified Joint Chapter 11 Plan of Refco, Inc. and Certain of its Direct and Indirect Subsidiaries (Docket No. 3948) (the "Plan")) copies of, or access to, all the Investigative Documents requested by the Litigation Trustee in the possession, custody, or control of the Examiner. "Investigative Documents" shall mean: (a) all documents² produced to the Examiner by third-parties; (b) all documents produced to the Creditors Committee and the SEC in these cases and shared with the Examiner; and (c) all documents shared with the Examiner by the Debtors and their professionals. The Litigation Trustee shall request copies of, or access to, all Investigative Documents in the possession, custody, or control of the Examiner (except that the Litigation Trustee need not request copies of any Investigative Documents that the Trustee reasonably believes are already in the Litigation Trustee's possession, custody, or control), it being the intention of this Order that the Litigation Trustee ultimately have all of the Investigative Documents, from one source or another, in his possession, custody, or control.

4. The Examiner is authorized to provide to the Litigation Trustee, in the sole discretion of the Examiner, copies of, or access to, the Other Documents in the possession, custody, or control of the Examiner. "Other Documents" shall mean all documents in the possession, custody, or control of the Examiner that are not Investigative Documents.

² The term "documents" as used in this Order shall have the meaning ascribed to it in Bankruptcy Rule 7034.

5. Any such provision of Investigative or Other Documents by the Examiner to the Litigation Trustee is not, and shall not be deemed to be, a waiver of any currently existing work-product or other privilege.

6. Upon delivery to the Litigation Trustee of all Investigative Documents requested by the Litigation Trustee pursuant to paragraph 3 of this Order, the Examiner and the Examiner's Counsel are authorized to retain or dispose of all documents received by or generated by the Examiner and the Examiner's Counsel, including the Investigative Documents and Other Documents, in the sole discretion of the Examiner, through whatever process the Examiner determines is appropriate.

7. Without limiting the Examiner's rights under the Protective Orders, Stipulations and Agreements to which the Examiner is subject (the "Stipulations"), with respect to the parties to the Stipulations who were served with notice of the Motion and Hearing, the Examiner's compliance with this Order constitutes compliance by the Examiner with the disposition provisions of all such Stipulations.

8. Notwithstanding any other provision in this Order, the Examiner shall preserve any and all memoranda, notes, and transcripts (and any exhibits annexed thereto) of any and all interviews conducted by the Examiner in the course of the Examiner's investigation (the "Interview Materials"). The Examiner shall preserve the Interview Materials until: 1) either the end of the criminal trial in *United States v. Bennett, et al.*, S3 05 Cr. 1192 (NRB) or the entry of an order from the federal district court judge presiding over that trial denying the defendants therein (the "Defendants") access to the Interview Materials; and, thereafter, 2) the Examiner has provided the Defendants with thirty days advance written notice of the Examiner's intent to destroy the Interview Materials; and 3) that thirty day period has expired. The Defendants reserve all their rights to seek judicial relief preserving the Interview Materials during that thirty

day period. Nothing in this paragraph shall prevent the Examiner from opposing the production of any of the Interview Materials on any ground including, without limitation, work product or attorney client privilege, or prevent the Defendants from contesting the Examiner's position.

9. Every creditor and party in interest is hereby precluded from issuing or serving upon the Examiner or the Examiner's Counsel any formal or informal discovery requests, including, but not limited to, any subpoenas, subpoenas *duces tecum*, request for production of documents, requests for admissions, interrogatories, requests for testimony (through subpoena, notice of deposition, request for a Bankruptcy Rule 2004 Examination, or otherwise), letters rogatory, or any other discovery of any kind whatsoever in any way related to the Debtors, the non-debtor affiliates of the Debtors, the bankruptcy cases, or the Examiner's investigation and Report with respect to any knowledge or documents or any other material in the possession, custody, or control of the Examiner or the Examiner's Counsel (including, but not limited to, any Investigative Documents or Other Documents); provided, however: (a) that in the event a creditor or party in interest shows that it has been unable to obtain discovery of certain information from any other source, then such creditor or party in interest may request that the Court permit discovery of that information from the Examiner and the Examiner's Counsel in a manner that is consistent with the Protective Orders, Stipulations and Agreements. The Examiner and the Examiner's Counsel have the right to and may oppose any such request for discovery; (b) that in the event a federal district court presiding over a criminal proceeding in which a person or entity is a defendant issues an order finding that the Examiner or the Examiner's Counsel is obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), as embodied in subsequent case law and the Federal Rules of Criminal Procedure, this Order shall not preclude such production as the federal district court may require. The Examiner and the Examiner's Counsel have the right to and may

oppose any efforts by a person or entity to secure such an order from a federal district court; and (c) the Examiner and the Examiner's Counsel shall be entitled to reimbursement of any fees and expenses incurred (including professional fees and expenses) in objecting to, opposing, or otherwise responding to any such discovery request, with such fees and expenses to be submitted and paid in accordance with the provisions of this Order.

10. Neither the Examiner nor the Examiner's Counsel shall have any liability with respect to any act or omission, statement or representation arising out of, relating to, or involving in any way, the Examiner's investigation or any report, pleading, or other writing filed by the Examiner in connection with the bankruptcy cases, except in the case of gross negligence or willful misconduct, and the Examiner and the Examiner's Counsel, without limitation, are hereby provided the same releases, exculpations, and limitations of liability provided to the Debtors and their professionals, among others, pursuant to the Plan, including Sections 10.2 and 10.3 of the Plan.

11. The Examiner and the Examiner's Counsel shall be entitled to reimbursement from the Reorganized Debtors (as defined in the Plan) for all fees and costs relating to compliance with the procedures set forth in this Order, including the transfer of materials to the Litigation Trustee; the disposition of materials, including the Investigative Documents and Other Documents; and any other actions taken by the Examiner or the Examiner's Counsel in furtherance of concluding the Examiner's duties in connection with his role as Examiner in these cases, pursuant to this Order or otherwise. Any fees or expenses for which reimbursement is sought, which are incurred by the Examiner or the Examiner's Counsel after June 30, 2007, shall be submitted to and paid by the Reorganized Debtors in the ordinary course of business pursuant to Section 12.3(b) of the Plan and paragraph 18 of the Order confirming the Plan (Docket No.

3971). The Examiner and the Examiner's Counsel shall file a final fee application for allowance and payment of all fees and expenses incurred during this case through June 30, 2007.

12. All objections to the Motion are hereby RESOLVED in accordance with the terms of this Order or OVERRULED, for the reasons set forth on the record at the Hearing.

13. Notice of the Motion and Hearing was sufficient and appropriate as evidenced by the Certificate of Service filed by the Examiner (Docket No. 5649).

14. The requirement of Local Bankruptcy Rule 9013-1(b) is waived.

15. The Court retains jurisdiction to determine all matters relating to interpretation or enforcement of this Order.

16. The Examiner shall serve a copy of this Order, upon the parties on whom the Motion was served, by first-class mail within five (5) business days after entry of this Order.

Dated: August 16, 2007, at New York, New York

/s/Robert D. Drain

ROBERT D. DRAIN

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT G

**Order Granting Motion of Neal Batson, the Enron Examiner, with respect
to Certain Procedural Issues in Connection with the Termination of the
Enron Corp. Examination, *In re Enron Corp.*, Case No. 01-16034 (AJG)
(Bankr. S.D.N.Y. Feb. 19, 2004)**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER GRANTING MOTION OF NEAL BATSON,
THE ENRON CORP. EXAMINER, WITH RESPECT TO
CERTAIN PROCEDURAL ISSUES IN CONNECTION WITH
THE TERMINATION OF THE ENRON CORP. EXAMINATION

Upon the Motion of Neal Batson, the Enron Corp. Examiner, With Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination (the "Motion"), and adequate and sufficient notice of the Motion having been provided to all parties in interest; and the Court having conducted hearings during which interested parties were given the opportunity to be heard with respect to the Motion; and having considered the Proposed Order submitted on behalf of the Enron Corp. Examiner; and having considered the Proposed Counter-Order submitted on behalf of the Merrill Lynch Defendants; and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted to the extent set forth in this Order;
2. Any creditor or party in interest to these cases is hereby precluded from issuing or serving upon the Enron Corp. Examiner¹ or the Enron Corp. Examiner's Professionals any formal or informal discovery requests, including but not limited to, any

¹ The defined terms herein shall have the same meanings ascribed to them in the Motion.

subpoenas, requests for production of documents, requests for admissions, interrogatories, subpoenas *duces tecum*, requests for testimony, letters rogatory or any other discovery of any kind whatsoever in any way related to the Debtors, the nondebtor affiliates of the Debtors, the bankruptcy cases, or the Enron Corp. Examiner with respect to any knowledge or documents (as defined by Bankruptcy Rule 7034(c)) or any other material in the possession, custody or control of the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals; provided, however:

- (i) that in the event a party in interest affirms that it has been unable to obtain discovery of certain information from any other source, then such party in interest may request that the Court permit discovery of that information from the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals in a manner that is consistent with this Court's orders concerning the confidentiality of Rule 2004 materials. The Enron Corp. Examiner and the Enron Corp. Examiner's Professionals have the right to and may oppose any such request for discovery; and
- (ii) that in the event a federal district court presiding over a criminal proceeding in which a party in interest is a defendant issues an order finding that the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals are obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), as embodied in subsequent case law and the Federal Rules of Criminal Procedure,

this Order shall not preclude such production as the federal district court may require. The Enron Corp. Examiner and the Enron Corp. Examiner's Professionals have the right to and may oppose any efforts by a party in interest to to secure such an order from a federal district court;

3. Except as prohibited by any existing confidentiality order, including the Confidentiality Order, or other confidentiality agreement executed by the Enron Corp. Examiner, the Enron Corp. Examiner shall deliver to counsel for the Debtors (or their successors), one copy of each report filed by the Enron Corp. Examiner in the bankruptcy cases, all material cited in the footnotes of each report and all closing documents for the transactions analyzed by the Enron Corp. Examiner by March 1, 2004. Counsel for the Debtors shall maintain the confidentiality of the material in accordance with the Confidentiality Order. Without limiting the generality of the foregoing, any Highly Confidential Material comprised by the material shall be maintained as such notwithstanding the citation to such material or the publication of any non-highly confidential portion thereof by the Enron Corp. Examiner. Consistent with any provisions of any confidentiality order entered in the bankruptcy cases, the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals shall be authorized and are directed to retain copies of the reports filed in the bankruptcy cases, together with copies of all materials cited in the footnotes of the reports, along with the transcripts of all examinations taken with the voluntary cooperation of a witness or pursuant to Bankruptcy Rule 2004. Notwithstanding anything to the contrary contained herein, and notwithstanding any provision of any plan of reorganization that is or may be confirmed

in these cases, the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals shall not be required to produce to the Debtors (or any successor to the Debtors or any other party) any material comprising the work product of the Enron Corp. Examiner and/or the Enron Corp. Examiner's Professionals and/or any material protected by the attorney-client privilege or other applicable privileges. The Enron Corp. Examiner and the Enron Corp. Examiner's Professionals shall be entitled to reimbursement for the costs of disposition of the material under the terms of this provision, and matters related to the completion of the Enron Corp. Examination (including the prosecution of all fee applications), and all requests for payment of fees and expenses (including professional fees and any expenses) shall be submitted to the Debtors for payment consistent with the terms of the orders entered in these cases addressing the compensation of professionals and reimbursement of expenses;

4. In the event of a conflict between this Order and any provisions of a plan of reorganization confirmed in these cases, this Order shall control as it pertains to the rights, duties and obligations of the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals; and

5. Except as specifically set forth herein, the balance of the relief requested in the Motion, including the relief sought in paragraphs 24 through 27 of the Motion, shall be reserved pending further order of this Court.

DATED: New York, New York
February 19, 2004

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

EXHIBIT H

**Order Approving Motion of Court-Appointed Examiner, Kenneth N. Klee, Esq., for Order (I) Discharging Examiner; (II) Granting Relief from Third-Party Discovery; (III) Approving the Disposition of Certain Documents and Information; and (IV) Granting Certain Ancillary Relief, *In re Tribune Company*, Case No. 08-13141 (KJC)
(Bankr. D. Del. Aug. 26, 2010)**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TRIBUNE COMPANY, et al.,¹

Debtors.

Chapter 11

Case No. 08-13141 (KJC)

Jointly Administered

Related to Docket No. 5115

**ORDER APPROVING MOTION OF COURT-APPOINTED EXAMINER,
KENNETH N. KLEE, ESQ., FOR ORDER (I) DISCHARGING EXAMINER;
(II) GRANTING RELIEF FROM THIRD-PARTY DISCOVERY; (III) APPROVING
THE DISPOSITION OF CERTAIN DOCUMENTS AND INFORMATION; AND
(IV) GRANTING CERTAIN ANCILLARY RELIEF**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tribune Company (0355); 435 Production Company (8865); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); ChicagoLand Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); forum Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo, Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KIAH Inc. (4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxent Publishing Company (4223); Publishers Forest Products Co. of Washington (4750); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, LLC (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, inc., n/k/a Tribune Washington Bureau Inc. (1088); Tribune California Properties, Inc. (1629); Tribune CNLBC, LLC, f/k/a Chicago National League Ball Club, LLC (0347); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); WPIX, Inc. (0191); and WTXN Inc. (1268). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

Upon consideration of the Motion of Kenneth N. Klee, Esq. (“Examiner”), by and through his attorneys, for an Order granting the *Motion of Court-Appointed Examiner, Kenneth N. Klee, Esq., for Order (I) Discharging Examiner; (II) Granting Relief from Third-Party Discovery; (III) Approving the Disposition of Certain Documents and Information; and (IV) Granting Certain Ancillary Relief* (the “Motion”); and, after due deliberation and sufficient cause appearing therefore; it is hereby ORDERED²:

1. The Motion is GRANTED.
2. The Examiner is discharged from his duties under the Examiner Order effective on August 20, 2010, and his appointment as Examiner is hereby terminated. The discharge of the Examiner is without prejudice to the entry of an order, in the future, reengaging the Examiner and the Examiner’s Professionals to provide such services as the Court deems necessary and appropriate.
3. Notwithstanding paragraph 2 above, the Examiner shall respond in writing to reasonable written inquiries from the Parties concerning the Investigation and the Report, and such inquiries and responses will be posted on the Examiner’s secure website for access and review by all Parties. Further, the Examiner will respond to reasonable inquiries from the Parties concerning documents received, maintained or created during the Investigation, and will otherwise assist and cooperate with the estate representatives and the Parties in the manner provided in this Order.
4. The Examiner and his Professionals shall maintain all Depository Documents, Third-Party Documents, Transcripts and Privileged Materials (collectively the “Complete

² Capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion. The term “Parties” as used in this Order shall include Aurelius Capital Management, LP

Examiner Record”) for a period of two years from the date of this Order (the “Initial Retention Period”), after which, the Examiner and his Professionals may destroy any such materials without further order of the Court. At least thirty (30) calendar days prior to the last day of the Initial Retention Period, the Debtors, or a successor estate representative as applicable, shall serve and file a notice upon all Parties, the Office of the United States Trustee, and all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure, reminding them of the Examiner’s ability to dispose of the Complete Examiner Record after the Initial Retention Period. Any party seeking to extend the Initial Retention Period, must file a motion requesting such relief prior to the expiration of the Initial Retention Period, with notice and an opportunity to object provided to all Parties, the Office of the United States Trustee, the estate representatives, the Examiner and his Professionals, and all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Court will schedule a prompt hearing on any such motion, and the burden of extending the Initial Retention Period shall rest with the movant.

5. For purposes of clarity, the Complete Examiner Record includes the notes taken or created by the Examiner and his Professionals regarding non-transcribed witness interviews. It is the Examiner’s position that such notes constitute attorney-work product and are privileged from disclosure to any of the Parties. It is the Debtors’ position that notes taken by the Examiner and his Professionals that purport to record what the interviewee said do not constitute work product or otherwise privileged material. All issues related to whether or not such materials are protected from disclosure by the attorney work-product doctrine, or otherwise, and all other issues relating to claims of privilege (specifically including claims unrelated to interviews that

were not professionally transcribed), are expressly reserved, and the Court makes no ruling on this issue at this time.

6. Neither the Examiner nor his Professionals shall have or incur any liability with respect to (a) any act taken or omitted to be taken, (b) any statement or representation arising out of, relating to, or involving in any way, the Investigation, or (c) any report, pleading or other writing filed by the Examiner or the Examiner's Professionals in connection with, related to, or arising out of the Debtors' Chapter 11 Cases including, without limitation, the Report. Nothing contained in this paragraph, however, shall be construed to limit the liability of the Examiner or the Examiner's Professionals for violation of any applicable disciplinary rule or code of professional conduct or for any acts of willful misconduct or gross negligence.

7. Except as otherwise provided herein, the Examiner and his Professionals are relieved from any duty to respond, object or move for a protective order in response to any formal or informal discovery process, except that this prohibition shall not apply to (i) requests for documents, materials or information that the requesting party has demonstrated to this Court, upon notice to and an opportunity to object by the Examiner, cannot be reasonably obtained from any other source, (ii) production required in response to an order of a federal district court presiding over a criminal proceeding in which a party in interest is a defendant, which finds that the Examiner or his Professionals are obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), as embodied in subsequent caselaw and the Federal Rules of Criminal Procedure, and (iii) discovery of information related to compensation applications filed by the Examiner or his Professionals.

8. The Examiner and his Professionals shall be entitled to reimbursement from the Debtors, their estates, and their successors in interest, for their reasonable fees and actual costs

after the date of the entry of this Order for (a) maintaining the Complete Examiner Record; (b) responding to reasonable inquiries as set forth in paragraph 3 above; (c) responding to any formal or informal discovery requests served on the Examiner or the Examiner's Professionals; (d) the preparation and prosecution of interim and final fee applications; and (e) such other actions undertaken by the Examiner or the Examiner's Professionals at the request or direction of the Court. To the extent that the Examiner and his Professionals are entitled to payment or reimbursement of their reasonable fees and costs incurred subsequent to the time period covered by their final fee applications, the Examiner and/or his Professionals shall present invoices to the Debtors, or a successor estate representative, as applicable, with copies to the Official Creditors' Committee and United States Trustee, with sufficient detail to determine the basis for the fees and expenses incurred (the "Notice Parties"). Absent receipt by the Examiner and his Professionals of a written objection to any such invoice within fourteen (14) calendar days, the Debtors are authorized to pay or reimburse the Examiner and his Professionals without the need to file fee applications and without the need for Court approval; provided, however, that (i) if a timely objection is raised to such invoice and the matter cannot be resolved consensually, the objection shall be presented to the Court for resolution and (ii) notwithstanding the foregoing, if any invoice exceeds \$100,000, the Examiner and/or his Professionals shall be required to file an application and obtain approval from the Court, on reasonable notice to the Notice Parties, prior to payment.

9. The final fee applications of the Examiner and the Examiner's Professionals may be filed by August 31, 2010. Objections, if any, to any final fee applications filed by August 31, 2010, must be filed by September 21, 2010. A hearing to consider the final fee applications filed by August 31, 2010 will be held on October 22, 2010 at 2:00 p.m. EDT. To the extent that the

Examiner and/or any of his Professionals are unable to file their final fee applications by August 31, 2010, counsel shall contact the Court's Chambers to set an objection deadline and hearing for any such applications.

10. In the event of a conflict between this Order and any provision of a plan of reorganization confirmed in the Debtors' cases, this Order shall control as it pertains to the rights, duties and obligations of the Examiner and the Examiner's Professionals.

11. This Court shall retain jurisdiction to resolve professional compensation issues for the Examiner or his Professionals in connection with the Debtors' cases.

12. This Order shall survive confirmation of any plan or plans in the Debtors' bankruptcy cases, as well as the conversion of any of the Debtors' cases to cases under Chapter 7 of the Bankruptcy Code.

13. The Court reserves jurisdiction as to all matters related to and arising from the implementation, interpretation and enforcement of this Order including, without limitation, any requested revision or modification thereof.

Dated: Wilmington, Delaware
August 26, 2010

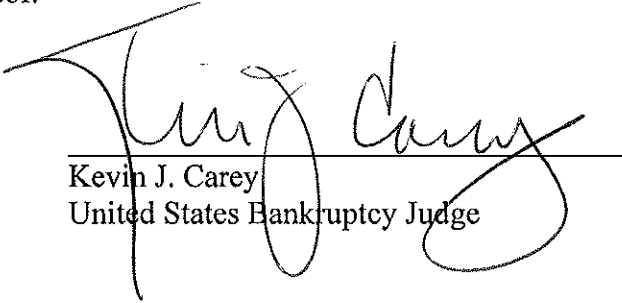

Kevin J. Carey
United States Bankruptcy Judge

EXHIBIT I

Order Granting Motion of Neal Batson, the Enron Examiner, with respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination, *In re Enron Corp.*, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Dec. 17, 2003)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: : Chapter 11
: :
ENRON CORP., *et al.*, : Case No. 01-16034 (AJG)
: :
Debtors. : Jointly Administered
: :
-----X

ORDER GRANTING MOTION OF NEAL BATSON,
THE ENRON CORP. EXAMINER, WITH RESPECT TO
CERTAIN PROCEDURAL ISSUES IN CONNECTION WITH
THE TERMINATION OF THE ENRON CORP. EXAMINATION

Upon the Motion of Neal Batson, the Enron Corp. Examiner, With Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination (the "Motion"), and adequate and sufficient notice of the Motion having been provided to all parties in interest; and the Court having conducted a hearing during which interested parties were given the opportunity to be heard with respect to the Motion; and sufficient cause appearing therefore; and based on the representations of counsel for the Enron Corp. Examiner¹ as well as counsel for the Debtors, the Creditors' Committee and certain other parties at the hearing on the Motion, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted, in part, to the extent set forth in this Order;
2. Effective as of December 31, 2003, the Enron Corp. Examiner, Neal Batson, shall be discharged from his duties as the Enron Corp. Examiner, under the terms of the Initial Examiner Order (as subsequently amended and supplemented), and any commitments or representations of Mr. Batson to the U. S. Trustee with respect to his

¹ The defined terms herein shall have the same meanings ascribed to them in the Motion.

duties as the Enron Corp. Examiner shall be considered terminated except as provided herein or by applicable law;

3. Upon the Effective Date of any plan of reorganization for Enron Corp., neither the Enron Corp. Examiner nor the Enron Corp. Examiner's Professionals shall have any liability with respect to any act or omission, statement or representation arising out of, relating to, or involving in any way, the Enron Corp. Examination or any report, pleading or other writing filed by the Enron Corp. Examiner in connection with the bankruptcy cases; provided, however, that nothing contained in this decretal paragraph shall be construed to limit the liability of the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals for violation of any applicable disciplinary rule or code of professional responsibility or for any acts of willful misconduct or gross negligence or release the Enron Corp. Examiner or the Enron Corp. Examiner Professionals from compliance with any obligations arising under any confidentiality order, including the Confidentiality Order, under this Order or under any other Order entered by this Court relating to the Motion; and provided further that, in the event that estate fiduciaries and professionals receive lesser levels of exculpation in connection with a confirmed chapter 11 plan, any party in interest may, during the period up to ten (10) days following the entry of such confirmation order, seek to modify this provision, upon notice and hearing, and the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals may object thereto; and, provided, further, that nothing contained herein shall preclude the Fee Committee from filing advisory reports with respect to the fees incurred by the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals;

4. In the event of a conflict between this Order and any provisions of a plan of reorganization confirmed in these cases, this Order shall control as it pertains to the rights, duties and obligations of the Enron Corp. Examiner and the Enron Corp. Examiner Professionals; and

5. Except as specifically set forth therein, the balance of the relief requested in the Motion shall be reserved pending further order of this Court.

DATED: New York, New York
December 17, 2003

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