Despite Enron, antiquated bank secrecy laws have covered up today's wrongdoing and regulatory failures

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The nation's bank regulatory system is in urgent need of "a drastic overhaul with disclosure, rather than secrecy, as its basis," the former top appointed banking and securities regulator for the state of Florida writes.

"Without full disclosure," predicts Raymond Vickers, "the sorry saga of Enron will be repeated again and again." "How," he asks, "can investors be expected to regain confidence in the financial system when they still have no way of knowing what goes on inside the Park Avenue offices of the very same bankers who financed Enron and other such schemes?"

"Antiquated bank secrecy laws," Vickers adds, "have covered up today's wrongdoing and regulatory failures, just as effectively as they did during the S&L scandals."

In an article published in volume 6 of The Long Term View, a journal of opinion published by the Massachusetts School of Law at Andover, Vickers notes that historically banking reform has only followed in the wake of a national calamity, such as the Great Depression. It is urgent, he writes, for bank examination reports and other regulatory records to be released to the public as soon as they are compiled and made available on the Internet "so that a depositor or investor could merely type in the name of a bank and have immediate access to its records."

"Such a banking-in-the-sunshine law would go far beyond reforming the banking industry, in that it would also purge the system of the bankers and corporate executives responsible for Enron and the other business failures of the 1990s," Vickers argues. "The disclosure of reckless financing schemes as soon as questionable loans are criticized by regulators would expose irresponsible officials...who are to this day more interested in personal enrichment than in fulfilling their fiduciary obligations to their stockholders."

Vickers, an attorney and economic historian from Tallahassee, Fla., is the author of several books on banking panics that has served as am attorney for more than 100 financial institutions.

Writing of the Enron collapse, Vickers noted that Neal Batson, Enron's court-appointed examiner, concluded both Citigroup and J.P. Morgan Chase "had actual knowledge of the wrongful conduct" and that they "aided and abetted certain Enron officers in breaching their fiduciary duties."

Calling Batson's report "too little, and way too late," Vickers said had the details of Enron's transactions been disclosed in the early 1990s by regulators examining the banks at the time, "stock analysts and credit-rating agencies would have been compelled to issue timely investor alerts about their riskiness, and the disaster could have been avoided."

Vickers goes on to say that by agreeing to a settlement of $300 million for the misdeeds of the two banks, "the regulators and prosecutors spared Enron's bankers the ordeal of a public trial." "Such a criminal prosecution," he adds, "would have spotlighted the bankers' complicity in devising fraudulent schemes to hide $8.3 billion in loans by falsely reporting the debt as cash flow from operations." And settling, instead of seeking jail time for the bankers, "also saved the jobs of all the regulators who failed to stop the madness."

Vickers said undoubtedly full disclosure of the bank regulators' examination reports, correspondence, and other regulatory records of Enron's two lead banks "would have had a chilling effect on their officers when the loans were being made" and this disclosure "would have proved to be an effective deterrent to similar misconduct in the future."

"But not only was there no disclosure at the time," Vickers continued, "but under current law, these regulatory records are sealed—and will continue to be sealed—from public view."

In fact, the banking authority writes, for as long as a bank continues to operate, its regulatory records, "which have been prepared by government employees at taxpayers' expense, remain confidential. And since both Citicorp, a subsidiary of Citigroup, the nation's largest financial institution ranked by assets, and Chase Manhattan Bank, a subsidiary of J.P. Morgan Chase, the second largest financial institution, "are too big to fail," Vickers writes, "their records will never be released."

Vickers points out that as opposed to bank regulatory records, the annual reports and other SEC filings of financial institutions typically are bland discussions of their operations, along with statistical data about their aggregate loan portfolios, and no specific details about questionable transactions are disclosed. Throughout the last decade, Vickers writes, the public SEC filings of Citigroup and J.P. Morgan Chase failed to reveal the controversial Enron transactions and even "the scant information" provided after the company's bankruptcy was woefully inadequate "and failed, even then, to disclose the details of the financing schemes."

In contrast to such uninformative SEC filings, bank examiners' reports contain detailed and candid narratives criticizing insider deals, bad loans, and other questionable transactions, such as the ones conducted by Enron and its banks, Vickers points out.

The writer notes that secrecy is maintained even after the failure of a bank as the public is prohibited from examining the federal government's regulatory and liquidation records of a defunct bank for 50 years after it closes its doors.

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