

Big Business Paving Way To Another Enron
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The white-collar criminals of Enron and WorldCom have barely begun reporting to prison, yet the investor protections enacted after our nation's worst corporate crime wave are under attack.

Under the guise of "maintaining and improving the competitiveness of the U.S. capital markets," a blue-ribbon committee with a nondescript name -- the Committee on Capital Markets Regulation -- recommended that financial market regulations and shareholder protections be rolled back. Chief among their targets is the 2002 Sarbanes-Oxley Act that instituted accounting reforms hailed as necessary then, but now said to be too onerous.

Despite praise of the committee's 32 recommendations by major brokerage firms and tort reformers at the U.S. Chamber of Commerce, the committee's anti-investor proposals would invite future corporate implosions and accounting scandals.

The committee's priorities include diminishing the power of state enforcement agencies responsible for prosecuting cases of financial fraud on behalf of investors. This is intended to eliminate investor advocates and regulators like Eliot Spitzer, the outgoing New York attorney general and governor-elect, who repeatedly confronted the financial services and insurance industries when the Securities and Exchange Commission could not -- or would not.

Another committee recommendation calls for the SEC and National Association of Securities Dealers to engage in a "cost benefit analysis" of the merits of investor-protection regulations before they are approved. In other words, equity markets can be policed as long as the financial services industry likes the price.

The committee further recommended the combination of the NASD and the New York Stock Exchange as the primary enforcers of the rules and regulations that protect individual investors. The sole basis for this recommendation is that the securities industry could save \$100 million a year by ending dual regulation.

With that in mind, we should not forget the combined enforcement record of the NASD and NYSE during the past decade. They jointly missed multibillion-dollar abuses such as late trading and market timing efforts by mutual fund managers and the pervasive issuance of conflict-laden research reports that favored the brokerage firms' largest clients over their individual investor clients.

As for the committee, it consists of 22 corporate chieftains, including the chief legal officer of a brokerage firm, the head of a hedge fund, the CEO of an accounting firm, and the former chairman and CEO of the NASD. This lineup of industry insiders, touted as disinterested and objective, deserves serious scrutiny. Barbara Roper, director of investor protection at the Consumer Federation of America, accurately asserted that the committee

preordained its conclusions and carefully selected statistics to make its case that more companies were listing their stocks on foreign markets because of burdensome U.S. rules.

The relentlessly self-promoting Spitzer made his share of enemies in the financial services and insurance industries, but he proved a point that should not be forgotten as the committee's recommendations are considered by Congress: Our financial markets cannot always be trusted to police themselves. Perhaps Sarbanes- Oxley should be retooled, but financial services and accounting industries cannot be allowed to further game the system in the process.

With a mandatory arbitration system that too often protects industry from legitimate claims by investors, the U.S. financial markets' regulatory system already is in doubt. By acquiescing to the demands of extremist market deregulators, the committee risks granting a symbolic free pass on a generation of misconduct -- most notably, Enron and WorldCom, mutual fund abuses, phony brokerage firm research, and, more recently, the backdating of options by hundreds of companies, among other abuses.

If that happens, investor protections and the ability of government authorities to pursue and prosecute corporate criminals will be further diminished, and nothing less than the integrity of our equities markets will be at stake.

Andrew Stoltmann is a Chicago-based attorney and author of Investor Rights for the 21st Century.