

# Los Angeles Times

## EDITORIAL

### **Defend Main St., not Wall St.**

**The SEC should support the UC Regents' case against Enron's bankers.**

THE U.S. SECURITIES and Exchange Commission's first mission is protecting investors. But as the agency, under Chairman Christopher Cox, a former California congressman, has loosened the Sarbanes-Oxley corporate reform law and fiddled with rules on reporting executive pay, it has appeared to be more concerned with protecting Wall Street's institutional power.

This week, the SEC has a chance to prove its critics wrong. Lawyers for the University of California Board of Regents are asking the Supreme Court to hear a class-action case pitting the university and other investors in Enron — who lost tens of billions of dollars when the energy trader went belly-up — against bankers who knowingly enabled the fraud. Briefs urging the court to consider the case are due on Friday. In the past, including in earlier Enron litigation, the SEC has supported investors' right to sue under the principle of "scheme liability," writing that anyone who "directly or indirectly engages in a manipulative or deceptive act as part of a scheme to defraud" is liable to investors. It should do so again.

The case against Enron's bankers represents a last chance for investors such as the UC system, which lost \$145 million from retirement and endowment funds, to collect damages. Although Enron and its auditor are defunct, banks that knowingly took part in transactions used to cook Enron's books — including Credit Suisse First Boston, Merrill Lynch and Barclays — are still in business. But the case, Regents of the University of California vs. Merrill Lynch, was thrown out by the U.S. 5th Circuit Court of Appeals, which questioned whether scheme liability applies when third parties don't make "false statements" to shareholders. Translation: Because the sham deals were engineered to fix Enron's annual reports and not the banks', the banks are off the hook. Such a "get out of jail free card," as the regents' attorneys have called it, creates obvious potential for abuse by fee-hungry financiers.

The Supreme Court is already scheduled to hear another scheme liability case — Stoneridge Investment Partners vs. Scientific-Atlanta Inc. — to which the regents' case may be linked. So far, the SEC has remained silent. But with its mandate to "maintain fair, orderly and efficient markets and facilitate capital formation," the SEC is uniquely suited to speak out when legal interpretations undermine confidence in the stock market's fairness. Especially when those rules hamper its ability to carry out its principal mission: protecting shareholders.