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Editorial

Holding Accomplices Accountable

Financial fraud is often a team sport. It took a host of banks, lawyers and accountants to hide Enron's problems from investors. So a federal appeals court sent precisely the wrong message when it prevented a class-action lawsuit against three of Enron's banks – Merrill Lynch, Credit Suisse and Barclays – from moving forward, saying that the banks "only aided and abetted that fraud by engaging in transactions to make it more plausible."

Considering the shattered lives strewn across the United States in Enron's wake, that's a lot for the word "only" to excuse.

The legal team behind the \$40 billion shareholder suit has asked the Supreme Court to review its case on the grounds that securities laws prohibit anyone, either directly or indirectly, from employing "any device, scheme or artifice to defraud." Thus, they argued, Enron's professional enablers – be they accountants, lawyers or bankers – can be held liable if they knowingly worked to deceive its investors.

The appeals court ruling should not be the last word. The Supreme Court has accepted a similar case on scheme liability and will hear arguments this fall. We hope that the justices will accept the Enron case as well and decide them together.

Either way, the Securities and Exchange Commission should ask the solicitor general to file a brief in support of the Enron shareholders' arguments. A fair reading of the law suggests that they should win. And holding outside professionals fully accountable for their actions may help prevent the next financial scandal. While it is extremely difficult to deter desperate executives – with everything to lose if their company goes under – from illegal cover-ups, professionals with many clients would think twice if they knew they too could be held liable.

The S.E.C. and its chairman, Christopher Cox, have come under increasing scrutiny for what investor advocates say is a steady drift away from the agency's mission of protecting shareholders. In a case earlier this year the S.E.C. urged a legal standard that would make it harder for shareholders to win fraud lawsuits. It is encouraging to hear that Representative Barney Frank, chairman of the House Financial Services Committee, has scheduled an oversight hearing to look into those concerns. We hope he takes a thorough look.