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## Senate Panel: Rein In Structured Finance

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A Senate panel wants bank and securities regulators to crack down on the kind of "deceptive" financing deals it says Wall Street firms, including **J.P. Morgan Chase** (JPM:NYSE - news - commentary) , **Citigroup** (C:NYSE - news - commentary) and **Merrill Lynch** (MER:NYSE - news - commentary) , engaged in with **Enron**.

The Senate Permanent Subcommittee on Investigation, which last year held several well-publicized hearings on Wall Street's role in the Enron mess, found that these and other firms raked in millions in fees by deliberately engineering complex transactions that enabled Enron to "engage in deceptive accounting or tax strategies."

And the committee, in a 41-page report released late Thursday, said it wants to make sure it doesn't happen again.

The panel called on the **Securities and Exchange Commission**, the **Federal Reserve** and the Office of the Comptroller of the Currency to issue guidelines by the end of the year about what kind of so-called structured finance deals are and are not permissible. Specifically, the panel said, regulators should prosecute firms that deliberately market a "deceptive financial product" that permits a company to include "misleading information in its financial statements."

But it's not clear the regulators will heed the panel's call for action.

A spokesman for the OCC declined to comment. The SEC also declined to comment, but sources familiar with the agency say it's unlikely to go along with the panel's request for coordinated interagency review.

Some of the regulatory indifference might stem from the expected departure of Sen. Carl Levin (D., Mich.), the current chairman of the panel, when the Republicans take control of Congress. It's not known whether Levin's expected successor, Sen. Susan Collins (R., Maine), will be as interested in pushing the regulators on the matter.

It's also unclear whether regulators, even if they wanted to, could craft a rule that clearly defines what is legal and what isn't in structured finance deals.

"In theory, [the panel] is trying to eliminate any transaction that could be misleading or deceptive to investors," said Brian Clarkson, director of the structured finance division at Moody's Investors Service, the credit rating agency. "They are trying to separate the good from the bad. How they get there I don't know."

And bringing an enforcement action against a Wall Street firm over a "deceptive" structured finance deal is easier said than done.

### **Define Deception**

For months, the SEC, as part of its continuing Enron investigation, has been gathering information about the same financing deals the Levin committee has labeled as "deceptive" and "sham" transactions. But there's no sign that the agency is close to filing civil fraud charges against any of the firms involved in those transactions.

One of the difficulties for regulators is that the vast majority of structured finance deals are perfectly legitimate and lawful ways for companies to transfer risk or mitigate their tax exposure. That's the case even if the deals sometimes appear odd or suspicious on their face -- as many of the Enron transactions do.

"All of these deals could best be described as having their primary benefit of making a balance sheet look better," said Mark Cheffers, CEO of AccountingMalpractice.com, an accounting consulting service.

Indeed, it's difficult to pursue an action against a financial institution, even when there appears to be a lot of evidence of potential wrongdoing on a bank's part.

On the same day the committee released its report, a group of insurers that were embroiled with J.P. Morgan in a dispute over a controversial Enron-financing deal chose to settle the matter rather than let a jury decide the outcome of the case. The insurers chose to settle even though the Levin committee already had labeled that transaction a "sham" and the insurers had obtained several potentially damaging emails from bank employees.

The settlement allowed both sides to walk away and claim victory without either being judged wrong or right.

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