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A year later, Enron's legacy is of reform

The energy trader's flameout moved Congress to try to protect investors

BY DEEPA BABINGTON
REUTERS

Call it Enron's gift to Corporate America.

One year after the energy trader began to crumble under a cloud of murky accounting and even murkier off-balance sheet partnerships, companies are coping with new rules and regulators, all inspired by Enron's spectacular collapse.

Congress has unleashed the most far-reaching corporate reforms since the Great Depression, imposing restrictions on auditors, tightening standards for boards of directors and increasing penalties for corporate wrong-doers.

What's more, the major stock exchanges have proposed dramatic listing-standard revisions, and just about every trade group and corporate organization has come out with its own set of reforms and guidelines.

Few doubt such enthusiasm for change would have existed without a collapse as stunning as Enron, where just about every safeguard put in place to protect investors — including auditors, boards of directors, corporate controls, outside review by regulators and Wall Street analysts — was criticized for failing to spot its problems.

"I often say that in a democracy, we govern either through leadership or crisis. Much too often we govern by crisis — we need a crisis to take the steps that are necessary," said Leon Panetta, the former White House chief of staff who sits on the board of the New York Stock Exchange and is co-chairman of the committee that developed the exchange's rule proposals.

"While everybody deep down knew that there were problems developing, it frankly took an Enron to shake the system up," Panetta said.

Fear of future collapses set off a series of rule-making sessions everywhere. At the NYSE, for example, a panel gathered in March with the goal of recommending changes to the listing standards by June.

Currently, the NYSE proposals need to be approved by the Securities and Exchange Commission.

"The question that was always discussed was what steps do we need to put in place to ensure as best as we could that we would not see future Enrons take place," Panetta said.

REFORMS NEED A CRISIS

That, legal experts say, is typical.

"The history of Wall Street certainly suggests that legislation always follows a crisis — they're never put there to prevent them," said Charles Geisst, professor of finance at Manhattan College and author of "Wall Street: A History."

Enron was hard for regulators and Congress to ignore because the devastation spread to Main Street from Wall Street. Thousands lost their jobs, and many more lost their life savings. Earlier this year, teary-eyed former Enron workers stood before lawmakers and television cameras to talk about their lost pension savings and the hard times they had fallen on.

However, many also agree that if the flood of corporate shenanigans had ebbed after Enron, the response from regulators would have been more muted. But Enron was followed by a tidal wave of alleged malfeasance, including bombshells from WorldCom and Adelphia Communications.

"I don't think people would have lost confidence in the capital markets without having had business failures, whether it was Enron or WorldCom or any other company," Deloitte Touche Tohmatsu Chief Executive Jim Copeland said last week.

PAT SULLIVAN/ASSOCIATED PRESS

The collapse of Enron Corp., which began a year ago, has led to a series of reforms that may not have been possible without the company's stunning fall.

The accounting industry, for example, had lobbied hard to tone down proposed restrictions on the lucrative consulting services that accounting firms can provide to audit clients.

For a while, it seemed they were successful. After a series of hearings on the Enron scandal early in the year, the momentum for pushing ahead on tough legislation in Washington had begun to wane as spring rolled around.

But when WorldCom shocked the markets with a $3.8 billion improper booking of routine expenses in June (the figure was to rise later), lawmakers quickly set aside their differences to pass the Sarbanes-Oxley bill in one swoop. The new law prohibits accountants from providing several consulting services to audit clients and sets up a new accounting board to police accountants, among other changes.

"Some regulation and some improvements would have happened with time for the (accounting) profession, but Enron caused much greater regulation to occur and of course it occurred at a much more rapid pace," said Ed Nusbaum, CEO of accounting firm Grant Thornton.

DARKER MOOD

Equally important is what didn't happen as a result of the Enron scandal, according to Michael Littenberg, a lawyer at Schulte Roth & Zabel, who specializes in securities law.

When Harvey Pitt first stepped into the shoes of chairman of the Securities and Exchange Commission, he spoke of a "new era of respect and cooperation" with the auditing profession and was perceived as ushering in a new era at an agency now willing to work with Corporate America.

This was an about-face from the previous activist regime headed by Arthur Levitt, which was widely viewed as a bull in a china shop, as one corporate executive put it.

But Pitt's SEC, despite being constantly criticized, has tried to project a tougher image since the scandal and has worked to tighten rules.

Other prominent issues have been pushed to the back burner. For example, a paper circulated last summer on easing the rules for established public companies to raise capital in the markets received a warm reception from the SEC then, but is unlikely to become a priority anytime soon, says Littenberg.

"The mood has become darker," said Charles Horn, a partner with law firm Mayer Brown Rowe & Maw. "There's a tremendous amount of pressure from the public and they (regulators) are very much under the microscope." //

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