Will the UK Let the Light of Day Shine Into Its Regulatory Process?

Should the regulators process be shrouded in mystery or should there be disclosure into the light of day? That is a question currently before authorities in London. As reported in the Financial Times (FT) column Inside Business, in a piece entitled "*UK regulators must judge the right time to go public*", Brooke Masters reported that the UK Financial Services Authority (FSA) cannot provide the public details about a matter under investigation "until its internal decision maker, the Regulatory Decisions Committee, has heard the allegations and the defence of the accused and come down in favour of enforcement action." There is currently legislation in front of Parliament which would allow a newly constituted financial regulatory agency, the Financial Conduct Authority, to go public with "warning notices" before a case gets to the Regulatory Decisions Committee. Masters cites advocates of this legislation who "say this would make the UK more like the US, where the Securities and Exchange Commission [SEC] can make public charges it has filed with a judge or administrative proceeding." Apparently representatives of British banking interests are desperately fighting to keep such proceeds secret.

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Master's presents several arguments why regulatory investigations should remain secret. She quoted Lord Flight who claims that "allegations can blacken reputations and harm innocent investors." He even pointed an accusatory finger at the head of the state of New York's Department of Financial Services' (DFS) Benjamin Lawsky who made allegations that Standard Chartered "hid $250 billion of transactions with Iran in breach of US sanctions, a charge that caused a one-day 16 per cent fall in the bank's share price." The bank insisted that they were "blindsided" by the allegations and indeed there were only $14 million in transactions which violated either US or New York state law. Of course we all now know that Standard Chartered also settled with the DFS for $340 million within days of these accusations being made public.

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Masters cites to un-named British Ministers who argue that "the public deserves to know when government regulators believe a major institution or prominent figure has committed wrongdoing. Further, timely announcements by the FSA or other appropriate regulators would "allow investors to move their money or protect themselves from similar misdeeds." She poses the question of "Wouldn't you want to know that a broker was facing charges of selling unsuitable investments before you – or even more pointedly, an elderly relative – gave him money?" Next she notes that "Quick enforcement also helps restore faith in the financial system. It is quite frankly a joke that nearly four years after HBOS failed, we still don't know whether the FSA thinks anyone there did anything improper."

Masters concludes her piece with a look at the SEC "Wells Notice" procedure, which is a private warning by the SEC to companies and individuals that the SEC wants to bring a case against them and this document invites the company or individual to respond directly to the SEC. This

process allows the party or parties in question to respond or to work out a settlement. Masters believes that "the practice has worked well, especially for investors, who often get an early heads up about potential problems because most public companies disclose when they have received such a notice." She believes that this interim step would be useful to give companies "a private right of reply before throwing open the doors." But Masters makes clear her final position by concluding that she does not believe the UK government should "give in to the City's efforts to keep the disciplinary process shrouded in mystery." In other words, the light of day should shine into these dark crevices of nefarious activity.