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Professional Conduct Codes for Bankers?

By Emmett Carrier, J.D. Candidate 2018 | April 3, 2017

Two weeks ago, the general counsel of the Federal Reserve Bank of New York issued a statement at the Yale Law School that everyone "should be concerned with culture in financial services." Such a comment should not be very surprising due to the role that large banks and other financial institutions played during the economic crisis in 2008. Banks have since been vilified, and rightfully so, for their excessive and risky decision-making which led to one of the worst recessions in United States history.

So, how does one correct a culture built around a capitalistic and opportunistic mindset, where the survivor of the fittest can reap a massive monetary award, in order to prevent another collapse? One approach, which has been implemented elsewhere around the world, is to implement a pseudo professional code, much akin to the code of ethics policing lawyers, accountants, and doctors.

To analogize, here is an example from the California Rules of Professional Conduct, which states a lawyer's duty with respect to client confidentiality. California is unique in this aspect, as California Bar members are expected to protect their client's confidentiality at "every peril" to himself or herself. Could such a noble requirement find any success in the banking community?

The difficulty, firstly, is the current toxic culture of the banking community, where investment bankers are often at odds with procuring the highest fee for their respective bank, while at the same time providing competent and fair services to their client. More often than not, bankers will do what's in the best interest for themselves and employer, and put the client second. This isn't evil, this is just human nature.

The other difficulty lies in the roles that investment bankers provide. In contrast with lawyers and doctors who serve a primary focus to their client, large banks not only provide advisory services, but also serve as middlemen who operate between buyers and sellers. Charging interest rates and providing loans and capital can go against the idea of getting your client "the best deal."

Of course, with any installation of an ethics code, the issue arises of how to police conduct. Lawyers and doctors can lose their licenses or face malpractice lawsuits for their unethical behavior, but no such remedies exist, outside of criminal penalties, in the banking community. One idea is to create a database of banker misconduct. By tracking "bad apples" in the financial world, bankers would be incentivized to be on their best behavior, as failing to do so would result in future difficulty of finding a job. While this practice and the potential of implementing ethics codes sounds good on paper, real change will not occur until there is a fundamental shift in the banking culture that does not reward risky and dangerous bets in the financial markets.