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Proposal to use the Financial Reporting Provisions of the U.S. Securities Laws to Implement Economic Equity and Social Justice Reforms

By Bruce Committee

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This paper proposes how the current securities laws' financial reporting and outside independent audit requirements can, without any action to change the statutes as they now exist, be used to promote economic fairness, social justice, and other social reforms..

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I. Introduction

Purchasers of securities, who thereby are a major source of funds which support companies' business ideas and operations, use information that the U.S. securities laws–The Securities Act of 1933 and the Securities and Exchange Act of 1934-- require companies to disclose to decide which companies' securities to purchase and how much to pay for them. Companies compete with each other for these limited investors' funds in large part with the financial statements that they publish for the purpose of attracting investors to their securities. These required financial reports play a major role in allocation of limited investor funds among businesses who want them. This allocation has a major impact on how and to what extent the operations of the business sector affects society.

II. Regulation of Fund Raising via Disclosure of Company Information

The disclosures required by both statutes are financial and non-financial in nature, but the core of the required disclosures are the registrant companies'[1] financial statements primarily consisting of a company's balance sheet and income statement. The regulator of the securities acts provisions, the U.S. Securities and Exchange Commission (SEC), assumed in 1934 and assumes today that in enacting the securities laws lawmakers primary concern was with providing investors in company securities with the information that they, investors, wanted, like a balance sheet and income statement report of a company's operating activities.

Of course, investors use other information as well in making their decision, but the financial statements are a primary, if not the main, input to such decisions. Financial information is not just information expressed in financial (money) terms like revenue and expenses. Any information which affects, or is important to, the decision as to which securities to purchase and how much to pay is "financial" information because it impacts the would-be and existing investors' purchase and sell decisions. For instance, investors concerned with the climate change impact of a company's operations may make their purchase decision based on how much carbon that business puts into the air each year.

Of particular importance is the statutes'. Requirement that the financial information–in this context "financial information" meaning such statements as the balance sheet and income statement--be independently audited. The 1934 Act created the SEC to administer both laws and to promulgate rules to implement the laws' reporting and other requirements.[2] The laws delegate to the SEC the work of promulgating the detail content of the laws' otherwise broadly described disclosure/ reporting requirements.

In addition to describing the possible economic and other environmental risks to the company's business in light of the kind of business and industry in which it operates (e.g. travel, agriculture, high tech communications, etc.), companies selling securities to the public must also report financial information in the form of the companies' financial statements which generally today consist of a set of four such statements: (1) balance sheet, (2) income statement, (3) statement of cash flows, and (4) statement of changes in owner's equity. Other statements are permitted, but these four are the basic ones. The original enactments only mention the first two. The others have been required by subsequent rulemaking by the SEC.

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III. Delegation of Federal Law Making to the Private Accounting Industry

The SEC, contrary to the securities laws, has delegated detailed accounting rulemaking to private groups dominated by the public accounting profession and accountants from, or which have an association with, companies which must register with the SEC. At the time the securities laws were enacted the profession of public accounting in the U.S. already had a well developed system of generally accepted accounting principles which they voluntarily followed in independently auditing company financial statements.

Before the securities laws were enacted, private companies often hired private members of the public accounting profession to audit the company's financial statements. Such independently audited statements accompanied by the independent auditor's report on the fairness of the presentation of those statements was a mark of trustworthiness that made a company's financial statements appear more reliable than otherwise; and that made the company more creditworthy to lenders and more trustworthy to existing and potential investors in the companies' stocks and bond (securities). Such enhanced status of companies' financial reports increased the value of the company and therefore increase the value of its securities.

But there were no laws which required companies to follow these generally accepted rules controlling the content of a company's financial statements. Because companies chose their "independent" auditors and negotiated the price of the audit work with the "independent" auditors, it was too difficult for these "independent" auditors to force or even just encourage the companies they audited to employ rules of accounting which the auditor believed was best and proper in reporting a fair presentation of the companies financial position and earnings.

Companies could always have their way with their "independent" in deciding the content of its financial reports because if it did not it simply could hire a different auditor who would agree with the company on the matter, and the so called "independent" auditor knew that.

The New York Stock Exchange (NYSE), a major location for securities transactions in the U.S., attempted prior to 1933 to require companies listing their securities for sale on the NYSE to report only financial statements that had been subject to an independent audit, but that attempt failed because the Exchange could not garner the authority to require it from its customers which were the companies whose securities the Exchange listed for trading. It would lose its customers' listings to other exchanges that were more accommodating to their clients wishes regarding submitting to an indpendent audit and the auditor's decisions on how its business transactions should be reported.

An authority was needed in the U.S. to force companies to provide to the public independently audited financial statements that were prepared according to a standard set of accounting rules that were in line with protecting the integrity of the securities markets. That authority became The Securities Act of 1933 and The Securities Exchange Act of 1934.

The 1933 Act controlled the initial sale of securities by a company, and the Exchange Act of 1934 controlled the subsequent sale of securities in the secondary markets and created the SEC to regulate both Acts. The 1934 Act authorized the SEC to make the detailed financial reporting rules that would fill up the details of the broadly worded financial reporting requirements found in the statutes.

Rather than the SEC itself engage, as the 1934 Act reuired, in making the detailed accounting rules, the SEC decided to simply accept what at that time the public accounting profession considered to be generally accepted accounting principles (GAAP). In 1938 The SEC made it official in Accounting Series Release No. 4, "Administrative Policy on Financial Statements," April 25, 1938:

> "In cases where financial statements filed with the Commission pursuant to its rules and regulations under the Securities Act of the Exchange Act are prepared in accordance with accounting principles for which there is ot substantial authoritative support, such financial statements will be presumed to be misleading or inaccurate despite disclosures contained in the certificate of the accountant or in footnotes to the statements provided the matters involved are material."
>
> While ASR No. 4 made clear that only accounting principles having "substantial authoritative support" would be appropriate for inclusion in financial statements filed with the Commission, the question at hand was what body should be responsible for establishing accounting principles. The Commission's first chief Accountant, Carman G. Blough, stated that if the profession wanted to retain the ability to determine accounting principles and methods, it would be up to the profession to issue statements of principles that could be deemed by the Commission to have "substantial authoritative support." [footnoted to Storey, Reed K. and Sylvia Storey, The Framework of Financial Accounting Concepts and Standards, Jauary 1998].
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> In response to this challenge to the profession, the American Institute of Accountants (AIA) gave to its Committee on Accounting Procedure (Committee [or CAP]) the responsibility for establishing accounting principles and the authority to speak on behalf of the Institute on matters of accounting principles. It was intended that the Committee would serve as the principal source of "substantial authoritative support" for accounting principles.[3]

In 1959 the American Institute of Certified Public Accountants (AICPA), the successor organization to the

AIA, replaced the AIA CAP with the AICPA Accounting Principles Board (APB) because CAP issued principles were considered too piecemeal and in need of a broader foundation of framework on which to base accounting rules. In 1973 the Financial Accounting Standards Board (FASB) became the successor to the APB in order to do what the APB had failed to do–develop broad based principles on which the more detailed accounting rules could be based. The founders of the FASB, however, was just another private group of accounting "experts" but unlike its predecessors it was independent of the AICPA. For a description of the FAF and FASB and their work which continues today (2021) as well as for consideration of the legality of this third level delegation in the making of U.S. securities and financial reporting accounting laws--(1) People to Congress then (2) Congress to SEC and then (3) SEC to FASB[4].

IV. Academic Accountants and others Excluded from Rulemaking–Private Accounting Practitioners Dominate

Noted in the search of a viable theoretical foundation for the making of accounting rules was, and is today, the absence of academics and academic research in the search. One significant academic work relevant to the matter, however, was the American Accounting Association's (an organization of accounting academics) publication of a booklet entitled A Statement on Accounting Theory and Theory Acceptance or (SATTA) published in 1977.[5] But its work was ignored by the accounting rulemakers because its conclusion was that obtaining consensus on such a foundation likely was not possible.

The want for a foundation for making accounting rules derives from a perceived need by the critics of extant accounting law making (accounting rule making) to avoid each rule being influenced by entity lobbyist who want the rule to be structured favorably toward particular constituencies of the business world whose self interest is of greater concern or is the only concern, in making accounting rules.

But one thing is for sure, and that is that various entities affected by a new financial accounting reporting rule have been over the years always attempting to influence, and often were successful in influencing, accounting rulemaking decisions. In light of the circumstance that the rule makers are private parties and not even a government agency like the SEC, their amenability to influence by registrant companies was quite real and considered to be a problem in accounting rulemaking. The accounting laws promulgated now by the FASB indeed have the authority of U.S. law because of the SEC's oversight authority of accounting rulemaking itself authorized by the 1934 Act albeit an oversight rarely and not meaningfully exercised. The failure of SEC registrant companies to follow FASB accounting rules in their financial reports is, according to federal law, fraudulent reporting.

V. Accounting Rulemakers Search for a Foundation to Guide them

The FASB's 1973 early response to its new accounting rule making responsibilities was to initiate a Conceptual Framework project with the goal of creating a theoretical foundation framework upon which future accounting rules would be based and which would provide a defense to attempts by SEC registrant companies to influence rulemaking. The Framework–a broad based description of the foundation of accounting rules to be published in the future--would serve as a guide for future accounting rulemaking as well as a defense shield against those financial reporting lobbyists intending to influence rulemaking for the benefit of their own self-interests or even just in support of their view of what the new rule should be for the best interests of the business community–always for the business community and not for the public interest in general (social impact of the rule).

One of the first issues of the Conceptual Framework Project was "Statement of Financial Reporting Concepts No. 1; Objectives of Financial Reporting by Business Enterprises," November 1978 (a pamphlet for sale by the FASB): "This Statement establishes the objectives of general purpose external financial reporting by business enterprises." The following language from Concept Statement No. 1, p. 7, suggests what the problem has always been with financial accounting rulemaking by private industry groups:

> The new series of Statements of Financial Accounting Concepts is intended and expected to serve the public interest within the context of the role of financial accounting and reporting in the economy—to provide evenhanded financial and other information that, together with information from other sources, facilitates efficient functioning of capital and other markets and otherwise assists in promoting efficient allocation of scarce resources in the economy. [Emphasis added].

Thus, the Conceptual Framework that would underly FASB accounting rulemaking would ensure "evenhandedness" (whatever that means) in FASB accounting rulemaking which, according to the First Concept Statement issued in building of the Framwork saw its purpose, as quoted above, to be only service to the "efficient" function of the capital and other markets. Misunderstanding achieving efficiency of investment resource allocation in the securities markets as the goal of the securities laws has caused us to arrive at where our economy and society are today: unacceptable poverty level wages for a majority of the population, systematic racism in employment which promotes same in other areas of society, exclusion of many form fully participating in the economy and society, general reduction in the quality of life for a very large segment of the population, etc.[6]

Standard law making in the U.S. as provided in the U.S. Constitution–by the U.S. Congress or even pursuant to the 1946 Administrative Procedures Act[7] (APA) by agencies of the government pursuant to rules of due process--would allow those concerned with fairness in the allocation of resources and with fairness in all other areas of society to participate in accounting rulemaking and to influence the accounting rulemaking process with inclusion and social justice being the purpose of their influencing the rulemaking process. The FASB does not even attempt to comply with even the APA, and this makes the FASB, as were its predecessors, a rogue federal law making orgnizations which illegal and unconstitutional lawmaking has unlawfully and unconstitutionally been sanction by the SEC. Financial accounting rulemaking is not well known by the society its rules affect, and the impacts of its rules on society is too are not very well known because academic accounts do not engage in the social science research. Efficiency concerns dominate financial accounting reearch.

Accounting students too have little interest in the social impact of accountng rules and accounting rulemaking.

Accounting academicians have been much more concerned with teaching students the current practices of accounting (actially, what they teach undergraduate students is bookkeeping, not accounting) and engaging in research promoting the current practice of accounting. Practitioners fund accounting faculty academic chairs to ensure that faculty provide a steady steam of graduated students knowledgeable of current bookkeeping practices and of the newest technologies used in current bookkeeping practice.

That colleges of business are separate divisions within a university structure tends to isolate consideration by business and accounting academicians from the other social sciences. Another contributing factor is the concern with students' learning the trades of business and accounting so they are better tooled up to obtain that first job, but only that first job, rather than being prepared to use accounting knowledge in the bettering of society.

VI. Making Federal Law is Perforce a Political Process

The failure of successive private industry delegatees of accounting rulemaking under the auspices of the U.S. Federal securities laws and Congress' delegatee the SEC is caused by a failure to recognize that making of rules for members of a society to follow is perforce a political process or should be a political process. There are no right or wrong rules of society, only rules which all of society has agreed to follow and which are the result of participation by the members of the society who are subjected to regulation by the rules created. When all members of society, or their elected representatives, are involved in the rule making it is much more likely that the rulemaking will be in the interest of those who will be subject to the rules. This is a basic tenant of political theory.

The conclusion of the SATTA study mentioned above should have been: Acceptance of accounting rules which registrant companies must follow should be rules produced in the standard political manner by which most other federal rules are produced–by members of society via, in the U.S., their elected representatives. In matter of point, that is the process required by the U.S. Constitution. Let debates by these citizen, as opposed to accounting profession expert, lawmakers address questions such as: What should be the goals of accounting rulemaking? Should economic concerns be the only concerns? And what specific accounting rules should be made that will best meet those goals?

Of course, members of society will have numerous other concerns that will form their ideas on the design of accounting rules. Society surely has a broader view of the concept of "accounting" than merely its purpose being the promoting of efficiency among business organizations and investors in them by way of their securities purchasers.

VII. An Example of how "Accounting" Rules, even within the Current Private Accounting, Rulemaking Framework, could Contribute to Social Justice Goals

The U.S. House and Senate state the purpose of the Securities Act of 1933 to be:

> [t]o provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes. [Emphasis added.][8]

Note the absence of "efficiency" being mentioned as a purpose.

The U.S. Securities and Exchange Act of 1934 has the stated purpose:

> To provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, [Public, No. 291.] to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes . [Emphasis added.][9]

Note the absence of efficiency being mentioned as its purpose.

Sections 25 and 26 of Schedule A of the 1933 Act and Section 13(a) of the 1934 Act (48 Stat 881) are the sections of the law which require companies publicly to report (file with the SEC) their financial statement information. These sections state such financial reporting requirements in broad terms and leave it up to the SEC to fill up the details that require the SEC (not private persons or groups like the FASB) to engage in detail accounting rulemaking processes.

Importantly, the 1933 and 1934 Acts require the financial statements filed with the SEC to be "certified by an independent public or certified accountant" (Schedule A, sections 25 and 26, 1933 Act) and "certified if required by the rules and regulations of the Commission by independent public accountants" (section 13(a), 1934 Act). The original bills debated by Congress orignally considered only requiring the chief financial officer of an SEC registering company to file statements swearing to the accuracy of a company's financial statements, and no independent audit.

A consideration for the law to require lawyers to report on the accuracy of registrants' financial statements was knocked down by a member of the legal profession because of testimony apparently communication that attorneys did not want that responsibility which conflicted with the legal profession's common duty to represent companies involved in disputes, not represent the public interest in which often was in conflict with the public interest in honest reporting. Finally, a leader of the public accounting/independent financial statement audit profession at that time (George O. May of the accounting CPA firm Price Waterhouse & Co.) appeared as a witness in the 1932-1933 hearings on bills, and his testimony was the basis for insertion into the bills the requirement that independent public or certified accountants pass on the accuracy or fairness of a registrant's financial accounting statements submitted to the SEC pursuant to the laws' financial reporting requirements.[10]

It was at this point, this author concludes, that a split occurred between the laws' purposes and financial accounting rulemaking occurred. Or, in other words, the work of filling up the financial reporting details work (making accounting rules) went off the rails otherwise established by the very broad purposes of the securities laws. See stated purposes above, and note the "other purposes" language in Congress' statement of the purposes of each law. Again, the FASB's focus on "efficiency" is a gross error.

Although financial statement auditors at the time of the 1933 and 1934 enactments, or immediately before the enactments, called themselves independent auditors they were "independent" only in the sense that they were not employees of the company which financial statements they were hired to examine or "audit." They were merely expert accountants who were hired to provide accounting expertise that the company itself did not have or which expertise the company wanted to promote to outsiders (creditors, would-be creditors, stockholders, would-be stockholders, the general public) in order to provide credibility to the accuracy of the company's financial statements.[11]

Thus, the primary beneficiary of the financial statement "outside" audit immediately prior to enactment of the 1933 and 1934 laws was the company itself. The company chose its auditors among public accountants competing for the job and with whom the company negotiated the audit fee that the company would pay. It was the company's interest that was the primary beneficiary of the financial statement audit, not the interests of the persons outside the company.

It was like hiring a plumber: the company chooses the plumber among all the available plumbers that it wants to hire to do the job, agrees to a fee for the work the plumber does, and pays the plumber when the work is done to the satisfaction of the company, not to the satisfaction of persons outside the company. While an outside government plumbing inspector might also have to be satisfied with the work, the plumber perceives the person who hired the plumber to be the client who must be satisfied in order to be paid. Satisfying the inspector is secondary to satisfying the client.

The independent public or certified public accountant vis a vis the U.S. securities laws, on the other hand, is to be working in the public interest not in the interest of the company who needs the audit to satisfy the laws' requirements for registrants to provide to the SEC information. Rather than the purpose of the required finanical accounting reporting, and thus accounting rulemaking in furtherance thereof, should be by law (1) to prevent fraud, (2) to prevent unfair practices, (3) to prevent practices causing social inequities, (3) to cause revelation of the company's character, and (4) for other purposes. These purposes a line with the above stated purposes of the 1933 and 1934 acts.

VIII. Liability Reporting–One Example

Paragraph 25 of Schedule A of the 1933 Act specifically requires a registrant to report "[a]ll the liabilities of the issuer in such detail and such form as the Commission shall prescribe." The law does not define "liabilities," and that is one of the definitions in the law which Congress expected the SEC to fill out with detail rulemaking. The SEC has delegated that now to the private FASB.

In the FASB failure to recognize that the U.S. Constitution provides the legitimate foundation for federal law lawmaking and that the purpose(s) of the securities laws is not to promote efficiency in business organizaions, it has embarked on a project to develop a foundation of its own beyond which is beyond its legitimate authority to do so. The project is named the FASB Conceptual Framework Project The first level of decision making for the wayward Framework Project was, and is, to create a set of basic concepts which will are to be the building blocks for the Framwork. One of those building blocks is FASB Conceptual Framework Concept Statement No. 6, "Elements of Financial Statements" which in part defines, at paragraph 35, liabilities:

> [1] Liabilities are probable future sacrfices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events.[Emaphsis added].

The U.S. is not the only country which regulates securities transactions. European and other countries have banded together to create a set of accounting rules for financial reporting which all of them use in filling up the details of financial reporting required by the laws in those countries.[12] The cooperative multi-country organization which makes these rules is the International Accounting Standards Board (IASB); and it too, following the U.S., has created a foundation or framework for making accounting rules and thereby eschews the social values of the individual counties cooperating in the international accounting rulemaking organizations: The IASB Conceptual Framework Project. Its definition of liability is found in its chapter 4, section 4.15:

> [2] An essential characteristic of a liability is that the entity has a present obligation. An obligation is a duty or responsibility to act or perform in a certain way. Obligations may be legally enforceable as a consequence of a binding contractor statutory requirement. The is normally the case, for example, with amounts payable for goods and services received. Obligations also arise, however, from normal business practice, custom and a desire to maintain good relations or act in an equitable manner. If, for example, an entity decides as a a matter of policy to rectify faults in is products even when these become apparent after the warranty period has expired, the amounts that are expected to be expended in respect of goods already sold are liabilities.

Other definitions of liability are found in Black's Law Dictionary and in The People's Law Dictionary:

> [3] The state of being bound or obligated in law or jsutice to do, pay, or make good something; legal responsibility.

Black's Law Dictionary.

> [4] Liability: N[oun]. one of the most significant words in the filed of law, liability means legal responsibility for one's acts of omissions.

The People's Law Dictionary.

The U.S. FASB definition above defines liability as "probable future sacrifices of economic benefits arising from present obligations" [emphasis added]. It is the only definition above which has the probable element in its definition of lilability. If a company has a present obligation, that obligation is not a liability unless there are probable future sacrifices. The problem with this definition is that if an obligation exists, even a legal obligation but not necessarily a legal obligation but just an obligation, but not known by others outside the company to whom the obligation is owed, the probability that the company will have to make a future sacrifice is very small or null because those to whom the obligation is owed are unaware that the company owes them. They likely do not have the information required to cause the future company sacrifice (or payment).

Many company obligations are like this, only known by the company to exist because inside the company is where such information can be found.

The independent financial statement auditor should have an obligation to require the company to report the obligation or else the auditor itself should report it to the SEC. That does not happen now because there is no rule requiring the accountant auditor to do that, and doing that, causing the obligation to be reported, would very much increase the probability of the obligation requiring a future sacrifice because lawyers would come out of the bushes to inform the respective obligees that they have valid claims against the company. The probability requirement in the definition of "liability" promotes social injustice.

For example, what if a company of fifty five thousand employees spread out across the major cities in the U.S. includes all men emplyees except for 300 women, 300 of African decent, 125 of Hispanic decent, and only twenty five over 62 years of age. It is likely the company is in violation of U.S. and state employment anti-discrimination laws and thereby has a legal obligation to persons who have applied for employment but were not informed by the company of the true reason they were not chosen to be hired. The company first should have an obligation to provide, and report to the SEC, at least an estimate of the legal claim owed to the rejected employment applicants and report that to the SEC.

But that does not happen because of the FASB definition of liability which has a probability component. If those who applied for employment were never informed of the unlawful reason they were not hired, or more likely the case were told lies as to why they were not chosen for hire, they likely will be unaware that they have a claim of unlawful employment discrimination. And even they somehow were aware, most likely would not have the resources to hire a lawyer to bring a claim in a forum where a judgment to pay could issue. If the U.S. FASB definition did not have the probability component– the IASB definition does not have a probability component–then the company would have an obligation to report such a liability on its financial statements filed with the SEC pursuant ot the U.S.

securities laws. Too, the independent financial statement auditors would also have a responsibility to see to it that the company reported the liability to the SEC.

The company has all the information which documents its unlawful employment discrimination practices and the harmed applicants for employment have very little or any information of the wrong doing. The job applicant may have suspicions, but most employment lawyers are only interested in low hanging fruit and without an admission by the company in its reports to the SEC such wrongdoing by the company is not low hanging fruit for which the lawyer is looking.

It is not an accident that the accountants who are employed by the companies they audit and who also as a profession make the accounting rules have caused the FASB Conceptual Framework Project to issue a Concept Statement which has the probability element in the definition of “liability” for SEC reporting purposes. If it were otherwise the level of unlawful employment discrimination in the U.S. likely would be very much reduced.

Note that the other definitions of liability above do not include the probability element. Why does the FASB definition include it? It is in the interest of the reporting companies being audited for the definition to include it. Its inclusion in the definition is very much adverse to the public interest in a just society and to the purposes of the U.S. securities laws.

This writer wants to emphasize the importance to society of the independent audit requirement of the U.S. securities laws. immediately preceding sentence. The U.S. securities laws put an outside, independent auditor physically inside a companies operating premises because that is necessary for the auditor to obtain the information necessary to determine whether a company’s financial statements properly report the financial status of the company and the finanical results of its operations over previous periods.

Continuing with the specific example of the above paragraphs, the independent auditor, if they have the appropriate education, are in a position to determine whether the company has engaged in a program of massive unlawful employment practices and thus whether the balance sheet should report a liability for that wrongdoing. Remember that the securities laws very specifically require registrants to report all of their liabilities to the SEC for public consumption. And the job of the indpendent auditor is to see to it that the company they are auditing does that.

The company would have no excuse for not doing that and for not taking all steps on a regular basis to uncover all of its liabilities if not for the probability element in the FASB’s definition of balance sheet “liability.” The Independent auditor’s excuse would be that they are not lawyers, do not have a legal education nor legal practice experience that would permit, or make it possible, for them to discover and uncover liabilities of the companies during the audit. The answer to this is that an accountant could also have a JD law graduate degree, or persons with a JD law degree could obtain a masters degree in accounting. The SEC could establish educational such legal standards for independent auditors who audit company financial information to be filed with the SEC.

It is no excuse to argue that a persons does not have the education, or expertise on hand, to comply with the securities laws. A change in the educational requirements of persons to qualify to be independent auditors authorized to audit company registrant financial reports to be filed with the SEC would indeed be a major change in the status quo, but so be it. Plenty of higher education programs exist that could teach both finanical accounting and law to persons who seek a career as financial statement independent auditors. Let the various purposes of the U.S. securities laws mentioned above be of particular focus of such an interdisciplinary education program. into registrant companies accountant auditors which have access to the inner workings of the company. That access is required for the independent auditors to do their audit work. Registrant’s have no option but to allow these auditors to learn everything about the company. These auditor’s are in a position to discover and uncover all registrant wrongdoing, and they are limited in doing that only by the accounting rules which they employ in their work.

And any legal or other obligations they discover they must uncover by requiring the financial statements and reports they audit to report those obligations. It is only the definition of liabilities, which the expert accountants in the organization of the FASB have been delegated to define, which now prevents those obligations from being made public.

The unconstitutional Congressional delegation of rulemaking to the SEC, and the SEC’s subsequent illegal delegation of accounting rulemaking to private organizations of accounting experts, the FASB, are an underlying significant cause of social injustices effected by wrongful conduct by private companies which the base of the U.S. economy. Just changing the definition of Liability would have a very positive impact on social justice in America.

Accountants who work as the chief financial officer for the company and the independent accountant financial statement auditors will argue that they are not lawyers or sociologists, and thus they are not qualified to discover all of a company’s obligations nor to estimate the total likely future financial sacrifice that will occur if such wrongdoing based liabilities are publicized. They should be qualified. They should get qualified. It is only a matter of education, formerly obtained and further obtained through experience. There are plenty of colleges of business which have departments of accounting, even Schools of Accounting

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within colleges of business, and lots of law schools all to provide the education needed independent auditors to do the job of promoting social justice in society.

The above focus on the FASB's definition of liability is just one of many avenues that can be taken towards using financial accounting expertise and in particular accounting rulemaking to promote inclusion and other social justice goals in society. A problem preventing us from following such a path, and many other paths to inclusion and social justice, is that accounting education has always been, and is today, trade education. Accounting faculty have always and today only teach current accounting practice. Our misguided goal is to teach our students what they need to know to get their first job, not what they need to make a larger contribution to society.

Better, or accurate, accounting for company liabilities is just one example of how the financial accounting reporting requirements of the U.S. securities laws could be administered to make promote economic equity and social justice. Many other ways in which such the financial accounting reporting requirements of the securities laws can be found. But to find them the education of accountants need to change. Accounting professors need to begin teaching "accounting" rather than only the bookkeeping dimension of accounting. A securities law focus in the teaching of financial accounting would be one way to begin the needed expansion of the subject of financial accounting so that the practice of accounting could contribute to the improvement of economic equity and social justice in society.

IX. Conclusion

The making of accounting rules by the accounting "experts" as has occurred since enactment of the U.S. securities laws has always been rogue in violation of the U.S. Constitution provisions for federal law making in still further violation of the the U.S. securities laws which state that the SEC shall make the accounting rules. Even worse is the circumstance that the expert accountants who have been making the accounting rules for SEC registrant's and their independent auditors to follow in preparing reports for filing with the SEC have grossly misunderstood the very purposes of the securities laws; and, therefore, they have failed to recognized, apply, and incorporate the purposes of the securities laws in their financial accounting rulemaking activities. That the education of accounting program college and university graduates has always emphasized bookkeeping knowledge over accounting knowledge is likely the cause of the failure.

End Notes

1. Companies subject to the U.S. securities laws must register with the U.S. Securities and Exchange Commission by filing various reports with the Commission. Such companies are called "registrants. The main criteria for having to register is the selling/issuing of their securities to the public.
2. That the SEC allows reporting companies to select their own "independent" financial statement auditors and to privately negotiate with them their audit fee is a conundrum which puts into question just how "independent" can CPA auditors be when they are beholden in this way to the company which financial statements they "independently" audit. Two, the public accounting profession firms which perform these "independent" audits dominate the accounting rule/standard making process which companies they audit must use in preparing their required financial statements. See two published papers which asks what did Congress intend when it enacted the securities law provision requiring the financial statement auditor or examiner to be "independent." Bruce Committe, "Independence of Accountants and Legislative Intent," Administrative Law Review, Vol 41, Winter 1989, pp. 33-59; "The Delegation and Privatization of Financial Accounting Rulemaking Authority in the US," Critical Perspectives on Accounting, 1990, pp. 145- 156.
3. (Cited in Office of Chief Accountant, Office of Economic Analysis, United States Securities and Exchange Commission, Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based [as opposed to a rules- based] Accounting System. Herein after "Financial Reporting Study"; See in the appendix to this paper a description of the principled- based approach to accounting rulemaking which the SEC, as modified in 2003, has selected as the current approach to be followed in prescribing accounting rules/standards to be followed in preparing the accounting financial reports required by the securities laws).
4. See Bruce Committe, "The Delegation and Privatization of Financial Accounting Rulemaking Authority in the US," Critical Perspectives on Accounting, 1990, pp. 145-156.
5. See a review of this publication at Nils H. Hakanssen, "Where Are We In Accounting: A Review of 'Statement on Accounting Theory And Theory Acceptance,'" The Accounting Review, Vol 3, No. 3, 1978, p. 717-725.
6. See a proposal for the accounting profession (accounting rulemaking and accounting practice) to pivot to include accounting for the social effects of accounting rulemaking in society Bruce Committe, "Towards A Philosophy of Accounting for Human Action," International Journal of Critical Accounting, Vol. 5, No. 6, 2013, pp. 563-576. Also see Bruce Committe, Anthology Chapter, "Accounting for

Humanity In Business Organizations," Chapter 8, in African Management, De Gruger Series, 2020.

7. An act to be followed when Congress has delegated an administrative agency to fill up the details of a legislative enactment. 5 USC §§ 500 et seq.: Although each US government agency is constituted within one branch of the government (judicial, legislative, or executive), an agency's authority often extends into the functions of other branches. Without careful regulation, that can lead to unchecked authority in a particular area of government, violating the separation of powers, a concern that Roosevelt himself acknowledged. To provide constitutional safeguards, the APA creates a framework for regulating agencies and their roles. According to the Attorney General's Manual on the Administrative Procedure Act, drafted after the 1946 enactment of the APA, the basic purposes of the APA are the following: [citation omitted] [1] to require agencies to keep the public informed of their organization, procedures and rules; [2] to provide for public participation in the rulemaking process, for instance through public commenting; [3] to establish uniform standards for the conduct of formal rulemaking and adjudication; [4] to define the scope of judicial review.
8. U.S. Statutes at Large, Pub. Law. 115-174, as amended May 24, 2018. Stat. 881 (Pub. Law 73-291).
9. See Bruce Committe, "Independence of Accountants and Legislative Intent," Administrative Law Review, Vol 41, Winter 1989, pp. 33-59.
10. See Bruce Committe, "Factors Shaping the Independent Public Auditing Profession in the United States From 1905 to 1933 (Working Paper No 41, 1979), Academy of Accounting Historians Working Paper Series, published by Periodicals Service Co., 11 Main St, Germantown, NY 12526, USA and Schmidt Periodicals GmbH, Dettendorf Romerring 12, D-83075 Bad Feilnbach, Germany.
11. If any company in the world sells its securities in the U.S. or has them listed on a U.S. securities exchange, it must comply with the U.S. federal securities laws and follow U.S. generally accepte (FASB) accounting principles in filing its accounting reports with the SEC. If it does not sell or list its securities in the U.S. it can follow the International Accounting Standards in reporting to its country's securities regulation agency. Those standards are issued by an International Accounting Standards Board (IASB). There are at least five major securities exchanges around the world.