

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

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Abstract

The two main U.S. securities laws-The Securities Act of 1933 and The Securities and Exchange Act of 1934-require companies selling (issuing) their securities to the public to disclose information about the securities issuing company so that the public has the information it needs to decide whether to purchase the issuer's securities and how much the purchaser is willing to pay. Selling securities such as stocks and bonds and other instruments is how companies raise the monies they need to fund their ideas, traditionally almost always business ideas but not necessarily so, and operations in furtherance thereof. 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..

Index terms— KM strategy, satisfaction, , bangladesh

1 Introduction

urchasers 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.

2 II.

3 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

4 III.

42 change impact of a company's operations may make their purchase decision based on how much carbon that
43 business puts into the air each year.

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

49 In addition to describing the possible economic and other environmental risks to the company's business in light
50 of the kind of business and industry in which it operates (e.g. travel, agriculture, high tech communications, etc.),
51 companies selling securities to the public must also report financial information in the form of the companies'
52 financial statements which generally today consist of a set of four such statements:

53 (1) balance sheet, (2) income statement, (3) statement of cash flows, and (4) statement of changes in owner's
54 equity. Other statements are permitted, but these four are the basic ones. The original enactments only mention
55 the first two. The others have been required by subsequent rulemaking by the SEC.

56 4 III.

57 Delegation of Federal Law Making to the Private Accounting Industry

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

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

70 But there were no laws which required companies to follow these generally accepted rules controlling the
71 content of a company's financial statements.

72 Because companies chose their "independent" auditors and negotiated the price of the audit work with the
73 "independent" auditors, it was too difficult for these "independent" auditors to force or even just encourage the
74 companies they audited to employ rules of accounting which the auditor believed was best and proper in reporting
75 a fair presentation of the companies financial position and earnings.

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

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

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

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

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

98 "In cases where financial statements filed with the Commission pursuant to its rules and regulations under
99 the Securities Act of the Exchange Act are prepared in accordance with accounting principles for which there is
100 ot substantial authoritative support, such financial statements will be presumed to be misleading or inaccurate
101 despite disclosures contained in the certificate of the accountant or in footnotes to the statements provided the
102 matters involved are material." While ASR No. 4 made clear that only accounting principles having "substantial
103 authoritative support" would be appropriate for inclusion in financial statements filed with the Commission, the

104 question at hand was what body should be responsible for establishing accounting principles. The Commission's
105 first chief Accountant, Carman G. Blough, stated that if the profession wanted to retain the ability to determine
106 accounting principles and methods, it would be up to the profession to issue statements of principles that could
107 be deemed by the Commission to have "substantial authoritative support." [footnoted to Storey, Reed K. and
108 Sylvia Storey, *The Framework of Financial Accounting Concepts and Standards*, Jauary 1998].

109 In response to this challenge to the profession, the American Institute of Accountants (AIA) gave to its
110 Committee on Accounting Procedure (Committee [or CAP]) the responsibility for establishing accounting
111 principles and the authority to speak on behalf of the Institute on matters of accounting principles. It was
112 intended that the Committee would serve as the principal source of "substantial authoritative support" for
113 accounting principles. ?? In 1959 the American Institute of Certified Public Accountants (AICPA), the successor
114 organization to the AIA, replaced the AIA CAP with the AICPA Accounting Principles Board (APB) because
115 CAP issued principles were considered too piecemeal and in need of a broader foundation of framework on which
116 to base accounting rules. In 1973 the Financial Accounting Standards Board (FASB) became the successor
117 to the APB in order to do what the APB had failed to dodevelop broad based principles on which the more
118 detailed accounting rules could be based. The founders of the FASB, however, was just another private group of
119 accounting "experts" but unlike its predecessors it was independent of the AICPA. For a description of the FAF
120 and FASB and their work which continues today (2021) as well as for consideration of the legality of this third
121 level delegation in the making of U.S. securities and financial reporting accounting laws-(1) People to Congress
122 then (2) Congress to SEC and then (3) SEC to FASB 4 .

123 5 IV. Academic Accountants and others

124 Excluded from Rulemaking-Private Accounting Practitioners Dominate

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

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

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

144 6 V.

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

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

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

8 MAKING FEDERAL LAW IS PERFORCE A POLITICAL PROCESS

164 Thus, the Conceptual Framework that would underly FASB accounting rulemaking would ensure "evenhand-
165 edness" (whatever that means) in FASB accounting rulemaking which, according to the First Concept Statement
166 issued in building of the Framework saw its purpose, as quoted above, to be only service to the "efficient" function
167 of the capital and other markets. Misunderstanding achieving efficiency of investment resource allocation in the
168 securities markets as the goal of the securities laws has caused us to arrive at where our economy and society
169 are today: unacceptable poverty level wages for a majority of the population, systematic racism in employment
170 which promotes same in other areas of society, exclusion of many from fully participating in the economy and
171 society, general reduction in the quality of life for a very large segment of the population, etc. ?? Standard
172 law making in the U.S. as provided in the U.S. Constitution-by the U.S. Congress or even pursuant to the 1946
173 Administrative Procedures Act 7 (APA) by agencies of the government pursuant to rules of due process-would
174 allow those concerned with fairness in the allocation of resources and with fairness in all other areas of society
175 to participate in accounting rulemaking and to influence the accounting rulemaking process with inclusion and
176 social justice being the purpose of their influencing the rulemaking process. The FASB does not even attempt
177 to comply with even the APA, and this makes the FASB, as were its predecessors, a rogue federal law making
178 organizations which illegal and unconstitutional lawmaking has unlawfully and unconstitutionally been sanction
179 by the SEC. Financial accounting rulemaking is not well known by the society its rules affect, and the impacts of
180 its rules on society is too are not very well known because academic accounts do not engage in the social science
181 research. Efficiency concerns dominate financial accounting research.

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

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

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

192 7 VI.

193 8 Making Federal Law is Perforce a Political Process

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

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

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

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

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

216 [t]o provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and
217 through the mails, and to prevent frauds in the sale thereof, and for other purposes. [Emphasis added.] 8 Note
218 the absence of "efficiency" being mentioned as a purpose.

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

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

223 9 [Emphasis added.] 9

224 Note the absence of efficiency being mentioned as its purpose.

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

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

236 A consideration for the law to require lawyers to report on the accuracy of registrants' financial statements
237 was knocked down by a member of the legal profession because of testimony apparently communication that
238 attorneys did not want that responsibility which conflicted with the legal profession's common duty to represent
239 companies involved in disputes, not represent the public interest in which often was in conflict with the public
240 interest in honest reporting.

241 Finally, a leader of the public accounting/independent financial statement audit profession at that time (George
242 O. May of the accounting CPA firm Price Waterhouse & Co.) appeared as a witness in the 1932-1933 hearings
243 on bills, and his testimony was the basis for insertion into the bills the requirement that independent public or
244 certified accountants pass on the accuracy or fairness of a registrant's financial accounting statements submitted to
245 the SEC pursuant to the laws' financial reporting requirements. ??0 It was at this point, this author concludes,
246 that a split occurred between the laws' purposes and financial accounting rulemaking occurred. Or, in other
247 words, the work of filling up the financial reporting details work (making accounting rules) went off the rails
248 otherwise established by the very broad purposes of the securities laws. See stated purposes above, and note
249 the "other purposes" language in Congress' statement of the purposes of each law. Again, the FASB's focus on
250 "efficiency" is a gross error.

251 Although financial statement auditors at the time of the 1933 and 1934 enactments, or immediately before
252 the enactments, called themselves independent auditors they were "independent" only in the sense that they
253 were not employees of the company which financial statements they were hired to examine or "audit." They were
254 merely expert accountants who were hired to provide accounting expertise that the company itself did not have or
255 which expertise the company wanted to promote to outsiders (creditors, would-be creditors, stockholders, would-
256 be stockholders, the general public) in order to provide credibility to the accuracy of the company's financial
257 statements. ??1 Thus, the primary beneficiary of the financial statement "outside" audit immediately prior to
258 enactment of the 1933 and 1934 laws was the company itself. The company chose its auditors among public
259 accountants competing for the job and with whom the company negotiated the audit fee that the company would
260 pay. It was the company's interest that was the primary beneficiary of the financial statement audit, not the
261 interests of the persons outside the company.

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

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

275 10 VIII. Liability Reporting-One Example

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

280 In the FASB failure to recognize that the U.S. Constitution provides the legitimate foundation for federal law
281 lawmaking and that the purpose(s) of the securities laws is not to promote efficiency in business organizaions, it
282 has embarked on a project to develop a

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284 Volume XXI Issue VIII Version I Year 2021 () A foundation of its own beyond which is beyond its legitimate
 285 authority to do so. The project is named the FASB Conceptual Framework Project The first level of decision
 286 making for the wayward Framework Project was, and is, to create a set of basic concepts which will are to be
 287 the building blocks for the Framework. One of those building blocks is FASB Conceptual Framework Concept
 288 Statement No. 6, "Elements of Financial Statements" which in part defines, at paragraph 35, liabilities:

289 [1] Liabilities are probable future sacrifices of economic benefits arising from present obligations of a particular
 290 entity to transfer assets or provide services to other entities in the future as a result of past transactions or
 291 events.[Emaphsis added].

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

299 [2] An essential characteristic of a liability is that the entity has a present obligation. An obligation is a duty
 300 or responsibility to act or perform in a certain way. Obligations may be legally enforceable as a consequence of
 301 a binding contractor statutory requirement. The is normally the case, for example, with amounts payable for
 302 goods and services received. Obligations also arise, however, from normal business practice, custom and a desire
 303 to maintain good relations or act in an equitable manner. If, for example, an entity decides as a a matter of
 304 policy to rectify faults in is products even when these become apparent after the warranty period has expired,
 305 the amounts that are expected to be expended in respect of goods already sold are liabilities.

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

307 [3] The state of being bound or obligated in law or jsutice to do, pay, or make good something; legal
 308 responsibility.

309 Black's Law Dictionary.

310 [4] Liability: N[oun]. one of the most significant words in the filed of law, liability means legal responsibility
 311 for one's acts of omissions. The People's Law Dictionary.

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

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

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

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

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

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344 Volume XXI Issue VIII Version I Year 2021 () A securities laws. Too, the independent financial statement
345 auditors would also have a responsibility to see to it that the company reported the liability to the SEC.

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

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

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

359 This writer wants to emphasize the importance to society of the independent audit requirement of the
360 U.S. securities laws. immediately preceding sentence. The U.S. securities laws put an outside, independent
361 auditor physically inside a companies operating premises because that is necessary for the auditor to obtain the
362 information necessary to determine whether a company's financial statements properly report the financial status
363 of the company and the financial results of its operations over previous periods. Continuing with the specific
364 example of the above paragraphs, the independent auditor, if they have the appropriate education, are in a
365 position to determine whether the company has engaged in a program of massive unlawful employment practices
366 and thus whether the balance sheet should report a liability for that wrongdoing. Remember that the securities
367 laws very specifically require registrants to report all of their liabilities to the SEC for public consumption. And
368 the job of the independent auditor is to see to it that the company they are auditing does that.

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

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

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

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

395 Accountants who work as the chief financial officer for the company and the independent accountant financial
396 statement auditors will argue that they are not lawyers or sociologists, and thus they are not qualified to discover
397 all of a company's obligations nor to estimate the total likely future financial sacrifice that will occur if such
398 wrongdoing based liabilities are publicized. They should be qualified. They should get qualified. It is only a
399 matter of education, formerly obtained and further obtained through experience. There are plenty of colleges of
400 business which have departments of accounting, even Schools of Accounting within colleges of business, and lots
401 of law schools all to provide the education needed independent auditors to do the job of promoting social justice
402 in society.

403 The above focus on the FASB's definition of liability is just one of many avenues that can be taken towards
404 using financial accounting expertise and in particular accounting rulemaking to promote inclusion and other social
405 justice goals in society. A problem preventing us from following such a path, and many other paths to inclusion

406 and social justice, is that accounting education has always been, and is today, trade education. Accounting faculty
407 have always and today only teach current accounting practice. Our misguided goal is to teach our students what
408 they need to know to get their first job, not what they need to make a larger contribution to society.

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

417 **13 IX.**

418 **14 Conclusion**

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

428 **15 End Notes**

429 1. Companies subject to the U.S. securities laws must register with the U.S. Securities and Exchange ¹ ²

¹Proposal to use the Financial Reporting Provisions of the U.S. Securities Laws to Implement Economic

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433 Commission by filing various reports with the Commission.

434 Such companies are called "registrants. The main criteria for having to register is the selling/issuing of
435 their securities to the public. 2. That the SEC allows reporting companies to select their own "independent"
436 financial statement auditors and to privately negotiate with them their audit fee is a conundrum which puts into
437 question just how "independent" can CPA auditors be when they are beholden in this way to the company which
438 financial statements they "independently" audit. Two, the public accounting profession firms which perform
439 these "independent" audits dominate the accounting rule/standard making process which companies they audit
440 must use in preparing their required financial statements.