CORPORATE DISCLOSURE THROUGH THE STOCK EXCHANGES

JAMES E. DAVIS

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Harvard Law School

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I. INTRODUCTION

In the ongoing debate over the regulation of securities, there are recurring historical claims regarding the activities of the stock exchanges prior to 1933. The participants in this debate can be roughly divided into two groups. The first group, consisting of Paul Mahoney, Roberta Romano, and George Benston, argues that the idea that there was substantial divergence between investor welfare and the behavior of exchanges and their members is unsubstantiated. Joel Seligman and Merritt Fox present the opposite view, arguing that the stock exchanges were inadequate regulators of securities prior to 1934.

Paul Mahoney articulates four central factual claims, which he asserts have survived largely unchanged since they were first articulated in the 1930s.1 The first of those factual claims evaluated by Mahoney, and the subject of this paper, is that disclosure practices of listed companies were deficient, implying that exchanges lacked either the will or the means to encourage adequate disclosure.2 Mahoney considers only the practices of the New York Stock Exchange in his evaluation of the exchanges as regulators.3 He points out that by 1934 the New York Stock Exchange had for many years required listed companies to provide stockholders with balance sheets and income statements prior to annual meetings.4 He states, based almost entirely on the studies of George Benston, that the evidence does not support the claim that these requirements were ignored.5

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2 See id. at 1464.
3 See id. at 1465-1470.
4 See id. at 1466.
5 See id.
Furthermore, he suggests there was a trend of progress in the promulgation and refinement of New York Stock Exchange rules.\textsuperscript{6}

Roberta Romano recently expressed a similar critical history of the role of the stock exchanges prior to 1933.\textsuperscript{7} She asserts that, “in the 1930s, public corporations voluntarily disclosed financial statements, typically under a stock exchange listing requirement, that contained substantially all of the information subsequently required under the federal laws.”\textsuperscript{8} She rests this assertion almost entirely on the Benston studies.\textsuperscript{9}

George Benston, in discussing the rationale underlying the Securities Act of 1934, makes various historical assertions.\textsuperscript{10} Benston states that before 1934 corporations whose stock was listed on the New York Stock Exchange, New York Curb Exchange, Chicago Stock Exchange and other regional exchanges had to submit balance sheets and income statements to the exchange.\textsuperscript{11} He also asserts that all corporations with stock listed on the New York Stock Exchange in 1933 were audited by certified public accountants, all listed the current assets and liabilities in their balance sheets, and a substantial percentage provided other information such as sales, cost of goods sold and depreciation expense.\textsuperscript{12}

The factual claims made by Benston, which have be reiterated by both Mahoney and Romano, have been strongly criticized by Merritt Fox in his contribution to the

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\textsuperscript{6} See id. at 1469-70.  
\textsuperscript{8} See id.  
\textsuperscript{9} See id.  
\textsuperscript{11} See id. at 133; George J. Benston, An Appraisal of the Costs and Benefits of Government-Required Disclosure: SEC and FTC Requirements, 41 J. LAW AND CONTEMPORARY PROBLEMS 30, 33 (1977)  
\textsuperscript{12} See id.
ongoing debate.\textsuperscript{13} Fox asserts that Benston’s method of researching what the exchange
required in the 1920s and early 1930s was to make inquiries of them.\textsuperscript{14} Fox reports that
there were, in fact, no rules requiring listed companies to send annual reports to
stockholders in advance of annual meetings.\textsuperscript{15} He notes that listed corporations were
bound only by their agreements with the exchange and that certain important information
was not required under all of the listing agreements.\textsuperscript{16}

Joel Seligman, the author of the seminal history of the Federal securities acts\textsuperscript{17}, is
the most prolific contributor in this debate. Seligman strongly criticizes the Benston
studies and he presents evidence of the limited corporate disclosures through the stock
exchanges prior to 1934.\textsuperscript{18} He points to the inability of the New York Stock Exchange to
promulgate and enforce effective disclosure rules and to the availability of unlisted trading
without any disclosures.\textsuperscript{19} Seligman also argues that neither state laws nor stock
exchanges could ensure the optimal level of corporate disclosures.\textsuperscript{20}

The goal of this paper is to report the information the stock exchanges required
corporations to disclose and to evaluate the value of that information to the public
investor. This historical analysis reveals that the claims made by all of the recent authors
are, to varying degrees, overstated. The thirty-four exchanges in operations at the end of
the 1920s each had their own system for listing securities and requiring corporate

\textsuperscript{13} See Merritt B. Fox, Retaining Mandatory Securities Disclosure: Why Issuer Choice is Not Investor
\textsuperscript{14} See id. at 33-34.
\textsuperscript{15} See id.
\textsuperscript{16} See id. at 34-35.
\textsuperscript{17} JOEL SELIGMAN, THE TRANSFORMATION OF WALL STREET (1982).
\textsuperscript{18} See Joel Seligman, The Historical Need for a Mandatory Corporate Disclosure System, 9 J. CORP. L. 1,
\textsuperscript{19} See id. at 53-56.
\textsuperscript{20} See id.
disclosures. There were well established rules on the New York Stock Exchange in the
1930s that approached the requirements of the 1934 Securities Exchange Act. However,
the other exchanges were generally more lax in their requirements and the enforcement of
the standards on all of the exchanges was questionable. Moreover, unlisted trading was an
available means to avoid the requirements; however, the unlisted trading that actually
occurred indicates that disclosures were still made by many of the corporations. Finally,
the information that was disclosed by the corporations prior to 1934 had limited value to
the public investor due in large part to the lack of accounting standards.

II. CORPORATE DISCLOSURES THROUGH THE STOCK EXCHANGE

The Various Exchanges

The stock exchanges were a significant source of control over corporate
disclosures prior to 1934. The exchanges required corporations who applied to list their
securities for trading on the exchange to disclose certain information in the listing
application. Some exchanges also required continued disclosures based on agreements
with individual corporations. The specific information the stock exchanges required
corporations to disclose, generally called “listing standards”, varied widely among the
various exchanges. Furthermore, many exchanges allowed securities to be traded on an

21 See infra at 38-45 (comparing the various sources of control over corporate disclosures).
LEGISLATIVE HISTORY OF THE NATIONAL SECURITIES EXCHANGE ACT OF 1934 (1937), in James M.
Landis papers, paige box 6, Harvard Law School Library (hereinafter SEC Report on Trading in Unlisted
Securities).
23 See, e.g., Regulation of the Stock Exchange: Hearings on S. 3895 Before the Senate Comm. On
Banking and Currency, 63rd Cong., 2nd Sess. 739-745 (1914) (hereinafter 1914 Senate Hearings)
(quoting New York Stock Exchange, Requirements for Original Listing).
24 See infra at 20-21 (comparing the 1914 listing standards of the New York, Boston, Chicago and
Philadelphia stock exchanges).
unlisted basis and required significantly less information to be disclosed.\textsuperscript{25}

One major problem with the content of the current debate regarding the exchanges’ role in corporate disclosures is the nearly total reliance on the New York Stock Exchange as the example of the activities of the stock exchanges prior to 1934. It is possible that the prior debate has been largely limited to the New York Stock Exchange because the authors concluded it was so dominant that the other exchanges had a nominal if any effect on the quantity and quality of information disclosed by corporations. The New York Stock exchange prior to 1934 was certainly the largest and most active exchange in the country; however, during that time there were thirty-three other exchanges in operation, many with significant trading activities.\textsuperscript{26} Consequently, relying on the New York Stock Exchange as the sole example creates a misleading picture of the role of stock exchanges in corporate disclosures prior to 1934.

The Various Stock Exchanges

Since the formation of the Boston Stock Exchange in 1834, there has always been more than one stock exchange in the United States.\textsuperscript{27} As financial centers developed throughout the country, exchanges developed to trade securities.\textsuperscript{28} By 1912 there were fourteen stock exchanges operating in the United States.\textsuperscript{29} In 1929, at the height of the bull market, there were thirty-four active stock exchanges in the United States.\textsuperscript{30} As of

\textsuperscript{25} See SEC Report on Trading in Unlisted Securities at 1-2.
\textsuperscript{26} See S. Rep. No 73-1455, at 5.
\textsuperscript{27} See The Boston Stock Exchange 5 (1930); C. A. Cole, Regional Stock Exchanges 1 (1943) (unpublished manuscript on file at the Baker Library, Harvard Business School).
\textsuperscript{28} See C. A. Cole, Regional Stock Exchanges 1.
\textsuperscript{29} See SERENO S. PRATT, THE WORK OF WALL STREET 135 (1919).
\textsuperscript{30} See S. Rep. No 73-1455, at 5.
1936, the SEC reported that twenty-three exchanges had registered as required under the 1934 Securities Exchange Act.31

To evaluate the significance of the exchanges’ variations in listing standards, it is important to understand the relative importance of the exchanges. The relative power of the exchanges can be measured by trading volume, the number of issues and shares listed on the exchanges, and the dollar value of the shares listed on the exchanges. By all of these measures, the New York Stock Exchange was the dominant stock exchange.32 In terms of trading volume, 68 percent of all stock traded in the United States was traded on the New York Stock Exchange in 1920.33 In 1928, the New York Stock Exchange percentage of the total trading volume dropped to 60 percent, and it remained at 60 percent in 1929.34 By 1932, the New York Stock Exchange percentage of total trading volume had rebounded to 75 percent, just above its percentage in 1920.35 It terms of market value, the value of the shares on the NYSE in July of 1933 was just over $22 billion, which was about 26 percent of the total value (over $84 billion) of all shares listed on exchanges at that time.36

A more important measure for the purposes of this paper, however, is the relative number of issues listed on the exchanges. This is true because the significance of a particular exchange’s listing standards can be best gauged by the number of issues and shares that are governed by the listing standards. The New York Stock Exchange’s dominance is significantly reduced when considered in terms of the number of stock issues

32 See Tables 1, 2, 3, and 4, infra at 55-56.
33 See Table 1, infra at 55
34 See id.
35 See id.
36 See Table 3, infra at 56.
listed on the exchange.\textsuperscript{37} In 1932 there were 1,207 stock issues listed on the New York Stock Exchange, representing around 20 percent of the 6,088 total issues listed on exchanges throughout the country.\textsuperscript{38} In 1935, the New York Stock Exchange listed 24 percent of the total stock issues and 17 percent of the total shares listed in the country.\textsuperscript{39} However, the figures collected in 1933 and 1935 do not reflect the fact there were some stock issues that were listed on the New York Stock Exchange and other exchanges simultaneously.\textsuperscript{40} Moreover, a nontrivial number of unlisted securities traded on the regional exchanges were listed on the New York Stock Exchange.\textsuperscript{41} Thus, the actual number of stock issues traded on the various exchanges is less than the total amount reported in Tables 3 and 4. Consequently, the percentage of issues listed on the New York Stock Exchange would be higher if calculated with the actual number of stock issues. Nevertheless, it is clear that the other exchanges did control a significant portion of the stock issues and shares, and the listing standards of these exchanges had a real impact on the corporate disclosures prior to 1934.

Of the other thirty-three stock exchanges\textsuperscript{42}, the most important were the New York Curb Exchange, and the stock exchanges of Boston, Chicago, Detroit, Philadelphia, 

\textsuperscript{37} See Table 3 and 4 at 56.
\textsuperscript{38} See Table 3 at 56.
\textsuperscript{39} See Table 4 at 56.
\textsuperscript{40} See SEC Report on Trading in Unlisted Securities at 31-33.
\textsuperscript{41} See infra at 29.
Pittsburgh, Los Angeles, and San Francisco.\textsuperscript{43} The New York Curb Exchange\textsuperscript{44} was the second largest exchange with around 18 percent of the total trading volume in 1920 and over 25 percent in 1929.\textsuperscript{45} The other major regional exchanges had relatively similar trading volumes: Boston and Chicago each had about 2 percent of the total trading volume, while Detroit, Philadelphia, Pittsburgh and San Francisco each had about 1 percent of the total trading volume.\textsuperscript{46} In terms of number of issues, the New York Curb Exchange was again the second most important exchange with 18 percent of the total issues in 1933 and 22 percent in 1935.\textsuperscript{47} Of the regional exchanges, Boston, Chicago and Philadelphia generally had more listings than the other regional exchanges.\textsuperscript{48} Clearly, the New York Curb and the regional exchanges played a significant role in disclosure of corporate information through the listing process.

The role of the New York Curb and the regional exchanges evolved over time. The first stock exchanges, located in New York and Philadelphia, developed in the centers of finance in the 1790s.\textsuperscript{49} Boston soon followed with its stock exchange in 1834.\textsuperscript{50} As security floatations moved westward, organized exchanges developed in their wake.\textsuperscript{51} For example, the San Francisco Mining Exchange was formed in 1862, the San Francisco Stock Exchange was formed in 1882, and the Los Angeles Stock Exchange was formed in

\textsuperscript{43} See S. S. Huebner, \textit{The Stock Market} 12 (1922); \textit{see also} Tables 1, 2, 3 and 4, \textit{infra} at 55-56.
\textsuperscript{45} See Table 1, \textit{infra} at 55.
\textsuperscript{46} See id.
\textsuperscript{47} See Tables 3 and 4, \textit{infra} at 56.
\textsuperscript{48} See id.
\textsuperscript{49} See C. A. Cole, Regional Stock Exchanges 1.
\textsuperscript{50} See C. A. Cole, Regional Stock Exchanges 1; \textit{Boston Stock Exchange} 5 (1930).
\textsuperscript{51} See C. A. Cole, Regional Stock Exchanges 1.
Each new exchange was the dominant market for its region and many focused on specific security niches; for example, the Los Angeles Stock Exchange was formed to trade in penny mining stocks and newly issued oil stocks. The pattern of stock exchanges following the development of capital market continued throughout the twentieth century: Chicago Stock Exchange was formed in 1882, various New Orleans exchanges were formed and reorganized beginning in the 1850s, and Pittsburgh formed its exchange in 1894 focusing on local financing of the Appalachian oil fields and local banks and railroads. Similarly, Baltimore, Cleveland, Cincinnati, Detroit, St. Louis, Spokane, and other cities developed regional exchanges as their regional financial markets developed.

The New York Stock Exchange was, from the start, the most progressive of the exchanges in its organizational development. It was consistently the first to institute changes that were eventually adopted by most if not all of the other exchanges. For example the New York Stock Exchange in the early 1800s was the first to publish the prices of transactions on the exchange. Boston followed in 1844, Philadelphia in 1851, and by the end of the century all other exchanges followed suit. The publication of prices was a significant step in the protection of investors because it was a tool to check secret profits from brokers and it was one of the few pieces of information a prospective investor had to evaluate the investment potential of a particular stock. This pattern of

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52 See id. at 1; JOSEPH L. KING, HISTORY OF THE SAN FRANCISCO STOCK AND EXCHANGE BOARD, 3-4 (1910).
54 See id. at 1; WALLACE RICE, THE CHICAGO STOCK EXCHANGE 16-17 (1928).
55 See C. A. Cole, Regional Stock Exchanges 1.
56 See id. at 2-3.
57 See id. at 3.
58 See id.
reform from the New York Stock Exchange through the regional exchanges was continued with virtually every progressive reform undertaken by the stock exchanges.

Curb exchanges developed in a similar pattern as the stock exchanges. Curb exchanges were originally more like open markets than stock exchanges. They were collections of stock dealers who meet to trade securities without a formal organization and without membership requirements.\textsuperscript{59} They were called curb exchanges because they generally meet in the open on the sidewalk rather than in a building.\textsuperscript{60} The most significant feature of curb exchanges were their limited listing standards and informal trading rules.\textsuperscript{61} The largest and oldest curb exchange was in New York, which formed about the same time as the New York Stock Exchange.\textsuperscript{62} Other significant curb exchanges met in Chicago, San Francisco, and Los Angeles.\textsuperscript{63} The New York Curb Exchange did not have any real organization and had no trading rules until around 1908.\textsuperscript{64} It did not form a listing department or set listing standards until 1911.\textsuperscript{65} It was essentially a market for mining, oil and industrial securities that were either unable or unwilling to comply with the listing requirements of the regular stock exchanges.\textsuperscript{66} It has been called “the great crucible in which are tested the thousand-and-one hasty stock floatations of each new era of expansion in the country.”\textsuperscript{67} It also presented investors with an opportunity to trade in

\textsuperscript{59} See S. S. Huebner, The Stock Market 7.
\textsuperscript{60} See id.
\textsuperscript{61} See id. at 9.
\textsuperscript{63} See SEC Report on Trading in Unlisted Securities at 29-33.
\textsuperscript{64} See Twentieth Century Fund, Security Markets 254; 1914 Senate Hearings at 206.
\textsuperscript{65} See Twentieth Century Fund, Security Markets 254.
\textsuperscript{67} See S. S. Huebner, The Stock Market 8.
securities before they were issued by the corporation on a “when as and if issued” basis. 68

In 1935 there were more stock listings traded on curb markets than on the New York Stock Exchange. 69

As travel and communication improved, the role of the regional stock exchanges dramatically changed. 70 The merging and consolidating of local railroads into national systems, local factories into national industries, and local utilities into national groups created a need for nationwide financing. 71 This shift caused a great flow of listings from the regional exchanges to the larger exchange system in New York. 72 The development of a national market had a disproportionate impact on the regional exchanges. 73 The Philadelphia Stock Exchange lost the issues that consolidated into the Pennsylvania Railroad. 74 Pittsburgh lost the natural gas stocks that formed the Ohio Fuel Supply Company. 75 New Orleans was the hardest hit by the development of the national security markets. 76 In the early 1900s the New Orleans Stock Exchange had listed twelve railroads operating out of the city, eight local utilities, as well as various industrial and other issues. 77 Every one of the twelve railroads was absorbed into a national system and the eight utilities consolidated into one company that is controlled by a national holding company. 78 By 1943, the New Orleans Stock Exchange had only 2 stock issues of any

68 See CONSTITUTION OF THE NEW YORK CURB MARKET, Art III, sec. 6 (1926); S. S. HUEBNER, THE STOCK MARKET 8.
70 See C. A. Cole, Regional Stock Exchanges 5.
71 See id.
72 See id.
73 See id.
74 See id.
75 See id.
76 See id.
77 See id.
78 See id.
trading consequence.\textsuperscript{79}

As the national role of the New York Stock Exchange developed, the regional exchanges served the function of “seasoning” securities.\textsuperscript{80} The regional exchanges continued to list the securities of local companies, many of which eventually failed.\textsuperscript{81} Of those companies that survived, some would grow to a stage at which they found it necessary or desirable to have national financing and national distribution and they would move their securities to the New York Stock Exchange.\textsuperscript{82} The New York Stock Exchange obtained a large proportion of their leading issues from this process.\textsuperscript{83} For example, the American Woolen Company and the Gillette Safety Razor Company started on the Boston Stock Exchange and later moved to the New York Stock Exchange.\textsuperscript{84} Similarly, Proctor & Gamble, Pure Oil Company, Kroger Grocery & Baking Company were originally listed on the Cincinnati Stock Exchange.\textsuperscript{85} Commonwealth Edison and Zenith Radio made their start on the Chicago Stock Exchange.\textsuperscript{86} One effect of this seasoning process was to test securities on a regional exchange before their listing on the New York Stock Exchange, most likely reducing the number of national failures. Another effect was to prevent the regional exchanges from keeping their most successful securities. With the seasoning process, the regional exchanges listed the securities of small but growing companies or failing companies, making the regional exchanges much less stable.

During the bull market of the 1920s the trading on the regional exchanges reached

\textsuperscript{79} See id.
\textsuperscript{80} See id.
\textsuperscript{81} See id.
\textsuperscript{82} See id.
\textsuperscript{83} See id.
\textsuperscript{84} See id.; BOSTON STOCK EXCHANGE 22.
\textsuperscript{85} See C. A. Cole, Regional Stock Exchanges 5.
\textsuperscript{86} See id. at 5-6.
a scale never previously approached. The new business on the regional exchanges was strong enough to temporarily obscure the drift of securities to New York. In fact, one source of this increase was from a shift of issues from the New York Stock Exchange to the regional exchange. Many new and exciting issues were not listed on the New York Stock Exchange in 1929 because the companies chose to avoid the stricter listing requirements. Between July 1, 1925 and July 1, 1930, the stock issues on the Boston Stock Exchange increased from 300 to 437. The issues on the Chicago Stock Exchange more than doubled from 237 at the end of 1926 to 535 at the end of 1929. The Detroit Stock Exchange acquired ninety new issues in 1928 alone, and the Cleveland Stock Exchange issues increased by sixty-two in 1929. The other regional exchanges underwent similar increases in the listed issues.

The spectacular rise of business on the regional exchanges in the 1920s was matched by an equal fall in the 1930s. Chicago’s trading volume dropped from its 1929 peak of over 82 million shares to 15.6 million shares in 1932 – a drop of over 80 percent. Philadelphia’s high volume in 1929 of 35.5 million shares shrank to 6.6 million shares in 1932. The other exchanges suffered similar declines in trading volume. Moreover, the regional exchanges lost several established issues and listed fewer new issues.

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87 See id. at 10; JOHN KENNETH GAlbraith, THE STOCK MARKET CRASH OF 1929 58-59 (1979).
89 See id.
91 See CHICAGO STOCK EXCHANGE, 1931 YEAR BOOK 36 (1931); C. A. Cole, Regional Stock Exchanges 10.
93 See id. at 10.
94 See CHICAGO STOCK EXCHANGE, 1931 YEAR BOOK 32; C. A. Cole, Regional Stock Exchanges 15.
95 See C. A. Cole, Regional Stock Exchanges 15.
96 See id.
97 See id. at 14-15.
stocks were a significant portion of the issues that were withdrawn after 1929, and many of those remaining after 1932 disappeared in the 1933 banking reorganizations.\textsuperscript{98} The Baltimore Stock Exchange, for example, lost 16 bank issues between 1929 and 1935, which represented about 15 percent of its listings.\textsuperscript{99} New issues also declined from the regional stock exchanges, in part because of efforts to prevent the simultaneous public offering and listing of securities.\textsuperscript{100}

Overall, the regional exchanges served a significant role in securities transactions prior to 1934. It is critical in understanding the impact of listing standards to recognize that there was a complex give and take among the exchanges. Any company dissatisfied with the requirements of the New York Stock Exchange could go down the street to the New York Curb Exchange or to one of the many other regional exchanges. Thus, a discussion of the listing standards of the regional exchanges and the requirements of unlisted trading on the regional exchanges must accompany an evaluation of the listing standards of the New York Stock Exchange.

\textbf{The Listing Standards of the Various Exchanges}

The information the exchanges required corporations to disclose varied based on whether the securities were “listed” or “unlisted”. A “listed” security was admitted to full trading privileges on an exchange upon application by the corporation.\textsuperscript{101} As a condition of listing, the corporation was required by the rules of the exchanges to file certain

\textsuperscript{98} \textit{See id.} at 15.
\textsuperscript{99} \textit{See id.: SEC Report on Trading in Unlisted Securities} at 31-33.
\textsuperscript{100} \textit{See C. A. Cole, Regional Stock Exchanges} 14.
\textsuperscript{101} \textit{See SEC Report on Trading in Unlisted Securities} at 1.
information concerning the structure and financial condition of the corporation. An “unlisted” security was admitted to trading upon application by a member of the exchange, ordinarily without regard to the preference of the corporation. The application was not supplemented with information from the corporation; however, the sponsoring exchange member was required to supply certain limited information concerning the corporation.

All of the stock exchanges by 1934 required corporations to disclose to the exchange some information in the listing application. Some of the exchanges also required the companies to agree to disclose certain information to its shareholders. The New York Stock Exchange, which has been the sole focus of the recent reviews of this history, had developed the most demanding set of disclosure rules over several decades. By 1934 all of the exchanges had generally adopted the New York Stock Exchange approach to listing securities; however, there existed many significant differences in the details. The New York Stock Exchange approach, in general terms, required that the corporation apply to the exchange to list its securities for trading. The application, which was required to contain specific information, was reviewed by a committee of a few exchange members and voted on by a larger committee. Once approved, the securities were “listed” on the Exchange.

102 See id.
103 See id.
104 See id. at 1-2.
106 See, e.g., 1914 Senate Hearings at 739-745; 865-867; 915-918.
110 See id.
111 See id.
The information the New York Stock Exchange required corporations to disclose in an application for listing stock in 1931 can be divided into four categories: corporate form, administrative information, capital structure, and financial information. The corporate form information included the name of the corporation, state of incorporation, copies of the charter and bylaws, history of the corporation, list of directors and officers, and date and location of the annual meeting. The administrative information generally consisted of the name and location of the transfer agent and registrar, address of the corporate offices, opinion of counsel as to the legality of the authorization and issue of securities, resolutions of the board and shareholders authorizing the listing of the securities applied for, and specimens of the securities to be listed.

The capital structure information required disclosures regarding the particulars of the corporations stock and debt. For common stock the corporation had to provide the amount authorized, outstanding and applied for, the par value, the rate of dividend, dividends paid, voting power, whether the stock is fully paid or assessable, whether personal liability attaches to ownership, and the purpose of the stock issue and the use of the proceeds. Regarding preferred stock, the corporation had to report amount authorized, whether cumulative or non-cumulative, preferences as to dividends and distributions of assets, and redemption and convertibility terms. Furthermore, the corporation had to describe mortgages and other debt detailing the date, maturity, interest

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112 For a copy of the 1931 New York Stock Exchange listing application, see *Stock Exchange Practices: Hearings on S.Res.84 Before the Senate Comm. on Banking and Currency, 73rd Cong., 2nd Sess.* Appendix to Parts 1, 2, and 3, 76-115 (1933).
113 See id.
114 See id.
115 See id.
116 See id.
rate, voting power, redemption and convertibility terms, and total amount authorized.117

The financial information the Exchange required corporations to provide in 1931 was extensive. The required information included balance sheets, income statements, and surplus account statements for the preceding two years, and earnings statements for the preceding five years showing interest charges, depreciation and taxes.118 The corporation was required to provide a description of all property owned, controlled and leased by the company including the location, nature and acreage as well as a description of all equipment, buildings and timber, mineral or water rights.119 The corporation was also expected to include its policy as to depreciation.120

All applying corporations were further obligated to agree to notify the Exchange of certain changes and publish specified information. The applicant agreed to notify the Exchange of any change in the general character of the business and of any disposition of property or stock that would materially affect its financial position.121 The applicant also agreed to publish periodic statements of earnings, as agreed upon with the committee, and to publish a balance sheet, income statement and surplus account statement at least once a year, fifteen days prior to the annual meeting.122 Furthermore, the companies agreed to publish all future annual financial statements and agreed to make no changes in its depreciation policy without notifying the Exchange and publishing the change in the next annual report.123

117 See id.
118 See id.
119 See id.
120 See id.
121 See id.
122 See id.
123 See id.
Railroad and mining companies were required to provide additional information in their listing applications. In 1931, railroads were required to report mileage completed, operated and contemplated. This was a significant reduction in the amount of information previously required. In 1914, the listing requirements for railroads required the following additional information: the inclusion of location and route of road, a description of property, the total mileage in operation, contemplated expansions, total equipment, amount of indebtedness or liability for mortgages, liens, leases, or guaranties and terms of payment, distribution of securities, and the application of proceeds.

The additional information mining companies were required to report in 1931 was substantially similar to information required in 1914. That information included the following items: geological description of the country in which the mines are located, character of the ore produced, the proper treatment method, description of the ore bodies, acreage values, and probabilities on further exploration, a history of the property giving prior workings on mine, results obtained and production each year, location of mines and proximity to railway or other common carrier, a mining development and an income account or a guarantee of amount to complete development and afford working capital, statement of ore reserves compared with reserves of previous years and an estimate by a competent mining expert of the probable life of the mine.

The listing standards of the New York Stock Exchange in 1931 were the result of an evolutionary process. For many years all that the Exchange required was to know

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124 See id.
125 See 1914 Senate Hearings at 739.
126 See id. at 741.
127 See id.
that the company really existed and that the shares were authentic.\textsuperscript{129} Over time, these standards strengthened.\textsuperscript{130} By 1914, the publication of annual reports, which had for years only been a recommendation by the Exchange, became a requirement for listing stock.\textsuperscript{131} Other significant improvements include the required statement of depreciation policy and agreement to not change the policy without notice and publicity.\textsuperscript{132} Furthermore, the Exchange required applying corporations to provide periodic financial reports.\textsuperscript{133} The 1931 listing application did not specify the frequency of these reports, rather the frequency was set by agreement with the Exchange.\textsuperscript{134} By 1923, over 25 percent of the corporations listed on the New York Stock Exchanges had agreed to publish quarterly reports and another 8 percent agreed to publish semi-annual reports.\textsuperscript{135} In 1933, over 60 percent of the listed companies published quarterly reports and over 12 percent published semi-annual reports.\textsuperscript{136}

The regional stock exchanges generally followed the New York Stock Exchange model of listing standards; however, the standards were considered significantly less strict.\textsuperscript{137} The New York Curb Exchange, which was primarily involved in unlisted trading, had notoriously limited requirements to list stock.\textsuperscript{138} The New York Stock Exchange described the Curb Exchange as “a market where unknown securities are dealt in without

\textsuperscript{129} See id.
\textsuperscript{130} See S. S. HUEBNER, THE STOCK MARKET 139.
\textsuperscript{131} See id.; 1914 Senate Hearings at 739-745; SERENO S. PRATT, THE WORK OF WALL STREET 128-29.
\textsuperscript{132} See TWENTIETH CENTURY FUND, SECURITY MARKETS 592.
\textsuperscript{133} See id.
\textsuperscript{134} See Stock Exchange Practices: Hearings on S.Res.84 Before the Senate Comm. on Banking and Currency, 73rd Cong., 2nd Sess. Appendix to Parts 1, 2, and 3, 76-115.
\textsuperscript{135} See TWENTIETH CENTURY FUND, SECURITY MARKETS 190.
\textsuperscript{136} See id.
\textsuperscript{137} See TWENTIETH CENTURY FUND, SECURITY MARKETS 258-259; ADOLF A. BERLE AND GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 319 (1933).
adequate publicity and without public safeguard.”139 The other major regional exchanges had listing standards more comparable to the New York Stock Exchange.140 The following table demonstrates the differing details required to be provided in the applications to list stock on the New York (N), Boston (B), Philadelphia (P), and Chicago (C) stock exchanges in 1914.141

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<th>Exchange</th>
<th>Information Disclosed</th>
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<td>x x x x</td>
<td>title of the corporation</td>
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<td>x x x x</td>
<td>date and authority of organization</td>
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<td>x x x x</td>
<td>articles of incorporation and bylaws</td>
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<td>x x</td>
<td>duration of charter and charters of subsidiary companies</td>
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<td>x x</td>
<td>special rights and privileges conveyed to the corporation under it charter or to directors under by-laws</td>
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<td>x x</td>
<td>whether an original organization or a consolidation of several previously existing firms or corporations</td>
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<td>x x x</td>
<td>if consolidated, a concise history of its organization, and the names and locations of constituent companies owned in entirety or otherwise, and the amounts authorized, issued, and owned stocks of same</td>
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<tr>
<td>x x</td>
<td>list of officers and directors</td>
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<td>x x</td>
<td>date and place of annual meeting</td>
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<td>x x x x</td>
<td>amount of capital stock authorized, issued, and applied for</td>
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<td>x x</td>
<td>par value</td>
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<td>rate of dividend</td>
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<td>voting power</td>
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<td>whether capital stock is full paid or non-assessable</td>
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<td>x x</td>
<td>whether personal liability attached to ownership</td>
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<td>whether preferred stock is authorized and whether cumulative or noncumulative</td>
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<td>x x x x</td>
<td>preference as to dividends and distribution of assets and redemption</td>
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<tr>
<td>x</td>
<td>certificate of amount of securities registered at date of application</td>
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<tr>
<td>x x x x</td>
<td>income statement for one year and recent balance sheet</td>
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<td>x</td>
<td>nature and character of product</td>
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<td>x</td>
<td>business to be transacted</td>
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<td>x</td>
<td>end of fiscal year</td>
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<tr>
<td>x x x</td>
<td>full description of the property, real, personal and leased</td>
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<tr>
<td>x</td>
<td>real estate owned in fee, acreage, and location, and the character of buildings thereon</td>
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139 See 1914 Senate Hearings at 285.
140 See, e.g., 1914 Senate Hearings at 739-745 (New York Stock Exchange); 757-758 (Chicago Stock Exchange); 865-867 (Boston Stock Exchange); 915-918 (Philadelphia Stock Exchange).
141 See id.
The Boston and Philadelphia exchanges also required similar additional information for railroads and public utility companies as the New York Stock Exchange.\textsuperscript{142} Chicago did not require any additional information for railroads and public utility companies.\textsuperscript{143} Furthermore, Chicago allowed stocks to be listed concurrent with the public offering of the stock.\textsuperscript{144}

The major regional exchanges were also more lax in the details of the agreements applying companies were required to enter into with the exchange to list stock. The New York Stock Exchange in 1914 required applying companies to agree to publish a statement of physical and financial condition once a year, at least 15 days before the annual meeting.\textsuperscript{145} The statement was to include an income statement and balance sheet for the corporation and its subsidiaries.\textsuperscript{146} The Boston Stock Exchange had a similar requirement; however, the annual report did not have to be published prior to the annual meeting.\textsuperscript{147} It could be published anytime on or before the annual meeting.\textsuperscript{148}

\begin{tabular}{|c|c|}
\hline
X & leases and special agreements \\
X & report of a qualified engineer covering the actual physical condition of the property as of a recent date \\
X X & map of the property and contemplated extensions \\
X X & name and location of transfer agent and registrar \\
X X & address of main office of corporation \\
X & resolutions of stockholders authorizing issue and resolutions of the board of directors authorizing listing of securities applied for \\
X X X & opinion of counsel (not an officer or director of the corporation) as to the legality of authorization and issue of securities \\
X X & specimens of all securities applied for \\
\hline
\end{tabular}

\textsuperscript{142} See 1914 Senate Hearings at 758-61; 865-67. \\
\textsuperscript{143} See id. at 757-58; WALLACE RICE, THE CHICAGO STOCK EXCHANGE 70-71. \\
\textsuperscript{144} See C. A. Cole, Regional Stock Exchanges at 10. \\
\textsuperscript{145} See 1914 Senate Hearings at 742-43. \\
\textsuperscript{146} See id. at 742-43. \\
\textsuperscript{147} See 1914 Senate Hearings at 866. \\
\textsuperscript{148} See id. at 866.
Philadelphia Stock Exchange required substantially the same financial statements; however, there was no requirements specifying when the statements had to be published. The Chicago Stock Exchange required a balance sheet and income statement to be provided with the listing application, but it did not require any further publication of annual reports or updated information to be filed with the Exchange.

The other regional exchanges added to their listing standards over time. For example, the Detroit Stock Exchange in 1927 added special requirements for oil and mining companies that were purportedly similar to those of New York, Boston and Philadelphia. The St. Louis Stock Exchange in 1925 added the requirement of certified audits at listing and periodic reports to be filed with the Exchange. The San Francisco Stock Exchange developed listing standards in 1927, making the listing process similar to the New York Stock Exchange. By 1929 the San Francisco Stock Exchange required listed companies to provide the Exchange with an income statement and balance sheet annually.

Government Influence over Listing Standards

State and Federal governments were a significant influence in the progression of stock exchange listing standards. The investigations and recommendations by the Hughes Committee in 1909 and the Senate investigations of stock exchange practices in 1914 and

149 See id. at 760.
150 See id. at 758; WALLACE RICE, THE CHICAGO STOCK EXCHANGE 70-71.
153 See id. (quoting Commercial and Financial Chronicle, July - Sep 1927, at1128).
1933 led to the most significant improvements in the listing standards.\textsuperscript{155} After the Panic of 1907 there were strong demands to control the stock markets.\textsuperscript{156} In 1908, President Roosevelt urged the regulation of stock exchanges and such a bill was introduced in Congress.\textsuperscript{157} In December of 1908, Governor Hughes of New York initiated the Hughes Commission, the first governmental investigation of the New York Stock Exchange, to examine speculation in securities after the Panic of 1907.\textsuperscript{158} The Hughes Commission in its final report made several recommendations for changes in the New York Stock Exchange, the majority of which were adopted by the Exchange.\textsuperscript{159} Regarding the disclosure of corporate information, the Commission recommended that the Exchange require listed companies to provide frequent financial reports including balance sheets, income statements and expense statements and that these reports should be made public.\textsuperscript{160} This recommendation directly caused the Exchange to request fuller information in the listing applications and more frequent financial reporting.\textsuperscript{161} The Commission also recommended that the Exchange require corporations applying to list securities to disclose the price paid for the companies capital stock, whether paid for with property or cash, and the commission paid to the promoters and vendors.\textsuperscript{162} Furthermore, the Commission

\textsuperscript{155}See Twentieth Century Fund, Security Markets 229.


\textsuperscript{157}See id.


\textsuperscript{159}See id.; (for a full copy of the Hughes Commission Report see Sereno S. Pratt, The Work of Wall Street 376-422; C. Van Antwerp, The Stock Exchange from Within 415-446.


\textsuperscript{161}See 1914 Senate Hearings at 286.

recommended that the Exchange abolish the unlisted trading on the Exchange, which it did in 1910.\textsuperscript{163}

The Hughes Commission also investigated the New York Curb Exchange and its recommendations had impact in the Curb’s organization and listing procedures. The Commission detailed what it called the “evils of unorganized status” including numerous fraudulent sales and general lack of supervision over the transactions.\textsuperscript{164} It recommended that the New York Stock Exchange reform the Curb market because New York Stock Exchange members conducted 85 percent of the business on the Curb Exchange.\textsuperscript{165} The New York Stock Exchange did not follow this recommendation.\textsuperscript{166} Nevertheless, after this strong critique by the Hughes Commission, the New York Curb Exchange organized itself in 1909 and created listing standards in 1911.\textsuperscript{167}

In 1912, the U.S. Congress created the Pujo Committee to investigate the money trusts, and that committee also made recommendations regarding the regulation of the stock markets.\textsuperscript{168} In 1914, the ultimately unsuccessful Owen Bill to regulate the stock exchanges was introduced in the Congress which led to the Senate investigations of the stock markets in 1914.\textsuperscript{169} The Bill included provisions requiring that no securities should be dealt with on an exchange unless there are on file copies of all agreements affecting the authorization, issuance, sale or disposition of the securities. It also provided for a

\begin{footnotesize}
\textsuperscript{163} See id.; SERENO S. PRATT, THE WORK OF WALL STREET 391.
\textsuperscript{165} See id.
\textsuperscript{166} See 1914 Senate Hearings at 285.
\textsuperscript{167} TWENTIETH CENTURY FUND, SECURITY MARKETS 254; 1914 Senate Hearings at 206.
\textsuperscript{169} See 1914 Senate Hearings.
\end{footnotesize}
reporting of the amount realized by the corporation and a full disclosure of fee, commissions, and other compensation in connection with the issuance and disposition of the securities. 170

After the stock market crash of 1929, the latent interest in governmental regulation of the stock markets was revived and new Senate hearings were initiated which ultimately culminated in the modern Federal regulation of stock exchanges. 171 As the Senate hearings were highlighting the practices of the stock exchanges, the exchanges were making changes in their activities, perhaps as an attempt to avoid government regulation. The New York Curb Exchange, for example, developed dramatically increased standards to admit securities to unlisted trading. 172 These changes were made after the Curb Exchange was investigated by the Attorney General of New York and during the Congressional investigation of stock exchanges. 173 The New York Stock Exchange, during the Senate hearings, met with the American Institute of Accounts to develop accounting standards to improve the quality of the required corporate financial reports. 174 The American Institute of Accounts made several recommendations, but the Exchange had not adopted them when the 1934 Act was passed. 175

Unlisted Trading on the Various Exchanges

170 See S. S. Huebner, The Stock Market 140.
Many exchanges allowed trading of “unlisted” securities which provided significantly lower quality and quantity of information in the review process by the exchanges. An unlisted security did not complete a listing application in the same sense as described above for listed securities.\(^\text{176}\) In fact, a security was brought to the exchange for unlisted trading by a member of the exchange, not the corporation.\(^\text{177}\) The exchange member was responsible for completing the application for unlisted trading and the information to be supplied was superficial at best.\(^\text{178}\) The corporation was not required to supply any information at any time to the exchange.\(^\text{179}\) Furthermore, the corporation was under no obligation to provide any financial reports to the exchange or to its shareholders.\(^\text{180}\) These weak requirements led a former president of the New York Stock Exchange to describe unlisted trading as a great mistake and wholly at variance with the duty of the exchange to protect the investor.\(^\text{181}\)

Most of the exchanges allowed unlisted trading at some point and a majority continued this practice through 1936, including the most powerful and respected exchanges.\(^\text{182}\) The New York Stock Exchange, for example, allowed unlisted trading between 1885 and 1910.\(^\text{183}\) The practice was ended only after the Hughes Commission investigated the unlisted practice and recommended its termination.\(^\text{184}\) During the many years of unlisted trading on the New York Stock Exchange, a considerable number of industrial and mining corporations were allowed to obtain a market on the Exchange

\(^\text{176}\) See SEC Report on Trading in Unlisted Securities at 1-2.
\(^\text{177}\) See id.
\(^\text{178}\) See id. at 1-2.
\(^\text{179}\) See id.
\(^\text{180}\) See id.
\(^\text{181}\) See W. C. Van Antwerp, The Stock Exchange From Within 167.
\(^\text{183}\) See S. S. Huebner, The Stock Market 139.
without furnishing many of the facts that were required of the listed securities.\textsuperscript{185}

Similarly, unlisted trading was allowed by the stock exchanges in Boston, Philadelphia, Pittsburgh, Los Angeles, and on the New York Curb Exchange.\textsuperscript{186}

In 1936, unlisted trading was still a significant part of the stock exchanges’ business. Of the twenty-three registered exchanges, sixteen permitted unlisted trading.\textsuperscript{187} The unlisted stock issues represented about 34 percent of the total issues traded on the various exchanges.\textsuperscript{188} For the exchanges which allowed unlisted trading, the unlisted issues were 60 percent of the total issues traded on those exchanges.\textsuperscript{189} In terms of trading volume, about 10 percent of all stock sold in July of 1935 and 12 percent in November of 1935 were unlisted securities.\textsuperscript{190} When considering only the exchanges that permitted unlisted trading, the trading volume of unlisted securities represented 48 percent of the stock sold in July of 1935 and 40 percent in November of 1935.\textsuperscript{191}

The New York Curb Exchange was the main exchange for unlisted trading. In 1933, 82 percent of the securities traded on the Curb Exchange were unlisted and they carried a market value over $12 billion.\textsuperscript{192} Between 1932 and 1935 there were an average

\textsuperscript{185} See S. S. HUEBNER, THE STOCK MARKET 139.
\textsuperscript{186} See SEC Report on Trading in Unlisted Securities at 29.
\textsuperscript{188} See id.
\textsuperscript{189} There were a total of 2,977 issues on the exchanges that permitted unlisted trading of which 1,808 were unlisted issues. See SEC Report on Trading in Unlisted Securities at 31-33.
\textsuperscript{190} See SEC Report on Trading in Unlisted Securities at 34.
\textsuperscript{191} See id.
\textsuperscript{192} See id. at 69-70.
of 1,465 unlisted issues on the New York Curb Exchange.\textsuperscript{193} The information required for unlisted trading privileges was minimal; however, in 1933, while under the spotlight of the Senate investigation, the Curb Exchange made extensive improvements in the application for unlisted trading.\textsuperscript{194} Those improvements included requiring balance sheets and income statements for preceding two years, evidence of an established practice of the corporation furnishing its shareholders with periodic financial reports certified by independent public accountants, and descriptions of the business, past dividends paid, funded debt, and other information.\textsuperscript{195} Notably, none of this seemingly important information was required for unlisted trading prior to 1933.\textsuperscript{196} Furthermore, these amendments were only binding on the new applying corporations; the hundreds of issues already admitted to unlisted trading were not subject to the amendments.\textsuperscript{197} Nevertheless, the Curb Exchange reported that of the 819 companies whose securities were admitted to unlisted trading as of March 1, 1934, 616 or 75 percent had established the practice of publishing periodic financial reports.\textsuperscript{198}

Many of the issues admitted to unlisted trading on the regional stock exchanges were listed on a different exchange. In Philadelphia, for example, unlisted trading was allowed for stock listed on the Boston, Pittsburgh, New York Curb and New York Stock Exchanges.\textsuperscript{199} On the Boston Stock Exchange in 1936, almost half of the stock issues

\textsuperscript{193} See id. at 50.
\textsuperscript{194} See id. 2; 8-9.
\textsuperscript{196} See id.
\textsuperscript{197} See id.; \textbf{MICHAEL E. PARRISH}, \textit{SECURITIES REGULATION AND THE NEW DEAL 41}.
\textsuperscript{198} See id.
admitted to trading were unlisted and 61 percent of the trading volume was in unlisted securities.200 However, almost all of the unlisted issues were listed on some other exchange.201 The New York Curb Exchange, on the other hand, primarily traded unlisted securities that were exclusively traded on the Curb.202 Of the 753 unlisted issues in 1936, 691 or almost 92 percent were traded exclusively on the New York Curb Exchange.203

Disclosures Required Under the Securities Exchange Act of 1934

The Congress in 1934 observed a wide variety of information required by the exchanges to admit stock to trading. With this background, the Congress established annual and periodic reporting requirements for companies listed on a stock exchange in sections twelve and thirteen of the Securities Exchange Act of 1934.204 The Act required more information to be disclosed than the most progressive exchanges required, and significantly more than required by the more lax exchanges and for unlisted trading.205 Specifically, §12(b)(1) of the 1934 Securities Exchange Act, as passed, required corporations to disclose the following information:

organization, financial structure, and matters of business

particulars regarding the terms, rights, privileges, and classes of securities

terms on which securities are to be , and during the preceding three years have been, offered to the public

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201 See id.
203 See id.
205 See id.
list of directors, officers, underwriters, and security holders of greater than 10 percent, their remuneration and material contacts with the corporation particulars regarding remuneration of others than directors and officers exceeding $20,000 per year particulars regarding bonus and profit sharing arrangements particulars regarding management and service contracts particulars of options existing or to be created balance sheets for past three years, certified by independent public accountants income statements for past three years, certified by independent public accountants other information the SEC deems necessary.206

II. VALUE OF THE LISTING STANDARD INFORMATION

The information to be produced in the listing standards detailed above represents the highest level of corporate disclosure required by the stock exchanges. However, it is not clear that the level of disclosures in practice met the level specified in the listing standards. The actual value of the information produced by corporations through the stock exchanges depends on the extent to which: (1) the listing standards were enforced, (2) the same information was available from other sources, (3) the data was current, (4) the data was available to the public, and (5) the data had value for the public.

The Extent to which the Listing Standards Were Enforced

Although many exchanges had established standards for listing securities, those

206 See id.
standards were not always enforced. The process for listing a particular security on a stock exchange started with an application produced by the applying corporation. The application was then reviewed by a small group of exchange members, usually called the listing committee or stock list committee. On the New York Stock Exchange, the stock list committee recommended securities for listing to the forty member governing committee. A stock would be listed upon the approval of a majority of the governing committee. It was the responsibility of the listing committee to enforce the listing standards by ensuring that the applying corporation submitted all required information and by investigating the truthfulness of the information in the application.

The overall effectiveness of the listing standards was significantly reduced during the bull market of the 1920s because of poor enforcement of those standards. The main source of the enforcement problem was the lack of manpower to review the number of applications and sufficiently investigate the statements of the corporation. This problem was most acute for the New York Stock Exchange because it had a small number of members on its stock list committee and a high number of applications to review. In 1914 the New York Stock Exchange stock list committee consisted of five members who reviewed about 100 applications that year. The governing committee met once a week and reviewed about three or four applications which usually took about three hours.

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208 See id.
209 See id.
210 See id.
211 See id.
212 See 1914 Senate Hearings at 204, 649.
213 See id. at 204.
1924, the stock list committee still consisted of five members, but the applications reviewed by the committee had increased to 338.\textsuperscript{214} By May of 1929 the number of members on the stock list committee was increased to six, but the number of applications increased to 759.\textsuperscript{215} By 1931, the applications dropped to 207 and the same number of stock list committee members reviewed them.\textsuperscript{216} Clearly, six exchange members reviewing 759 applications are not able to be as thorough as five members reviewing 100 applications. This lack of manpower directly led to the stock list committee quit fully investigating applications for listing additional securities of companies with securities already listed on the Exchange.\textsuperscript{217}

The manpower inadequacy of the New York Stock Exchange stock list committee is starkly revealed when compared to other exchanges. For example, the Los Angeles Stock Exchange in 1930 had six members on its stock list committee, which was the same number as the New York Stock Exchange.\textsuperscript{218} The Los Angeles stock list committee, however, only reviewed thirty-five applications in 1930, which is almost fifteen times fewer applications for the same number of members.\textsuperscript{219} A more striking example is that of the New York Curb Exchange. The Curb prior to 1929 had ten members on its stock list committee.\textsuperscript{220} That committee reviewed 105 applications in 1928 and 233 in 1929.\textsuperscript{221} In 1929, the New York Curb Exchange, as a result of increased applications and the great amount of investigation necessary to review them, increased the members on the stock list committee.

\textsuperscript{214} \textit{NEW YORK STOCK EXCHANGE, REPORT OF THE PRESIDENT}, 1924-1925 15 (1925).
\textsuperscript{215} \textit{NEW YORK STOCK EXCHANGE, REPORT OF THE PRESIDENT}, 1928-1929 2 (1929); \textit{NEW YORK STOCK EXCHANGE, REPORT OF THE PRESIDENT}, 1931-1932 79 (1932).
\textsuperscript{216} \textit{NEW YORK STOCK EXCHANGE, REPORT OF THE PRESIDENT}, 1931-1932 79 (1932).
\textsuperscript{217} \textit{See} S. Rep. No 73-1455, at 70.
\textsuperscript{218} \textit{LOS ANGELES STOCK EXCHANGE, REPORT OF THE PRESIDENT}, 1930 2 (1930).
\textsuperscript{219} \textit{See id.}, at 22.
\textsuperscript{220} \textit{NEW YORK CURB EXCHANGE, REPORT OF THE PRESIDENT}, 1929 17 (1929).
\textsuperscript{221} \textit{NEW YORK CURB EXCHANGE, REPORT OF THE PRESIDENT}, 1930 31 (1930).
committee to 20.\(^{222}\) The Curb also created four stock list sub-committees on formal listing, unlisted securities, investment trusts and foreign securities to better manage the application investigations.\(^{223}\) Thus, the Curb Exchange had 20 members to review 233 applications in 1929 while the New York Stock Exchange had only 6 members to review 759 applications.

Another source of the poor enforcement of the listing standards was the competitive pressure felt by the exchanges. It is axiomatic that the more trading on an exchange the more commissions earned by the members. Thus, the exchanges generally desired to increase the number of issues listed for trading on their exchange. Consequently, the exchanges were under pressure not to make their listing standards too strict; otherwise, the corporations seeking to list their securities would go to other exchanges, to unlisted trading or to the entirely unregulated over-the-counter markets.\(^{224}\) The phenomenon was observed in 1929, as noted above, when many of the new stock issues chose to list on regional exchange rather than the New York Stock Exchange because of the differences in listing standards.\(^{225}\)

There were publicized incidents of poor enforcement of listing standards on the New York and Boston stock exchanges, two of the most respected exchanges in the country. In New York, the stock list committee’s failure to adequately review applications of additional securities from corporations that already had stock listed on the exchange caused stock issues to be listed that under normal review would have been

\(^{222}\) New York Curb Exchange, Report of the President, 1929 17.

\(^{223}\) See id.

\(^{224}\) See Twentieth Century Fund, Security Markets 259; 1914 Senate Hearings at 442; S. S. Huebner, The Stock Market 141.

rejected. Frank Altschul, the chairman of the New York Stock Exchange stock list committee, admitted in his testimony at the Senate hearings that the committee did not review the business judgment and motives of the directors in seeking the new listing. He further testified that unless there appeared patently suspicious matter in the listing application, the listing committee accepted as truthful and accurate the statements contained in the application without investigation.

A specific example of the consequences of the New York Stock Exchange stock list committee’s lack of enforcement can be seen in the two applications by American Commercial Alcohol Corporation made in the summer of 1933. American Commercial Alcohol already had stock listed on the New York Stock exchange when they submitted two applications for additional listings of newly issued stock. Altschul testified that the committee did not investigate the applications because nothing appeared patently suspicious; the committee approved both applications without further review. However, the corporation did not indicate in its application, and the stock list committee failed to discover, that the corporation intended to exchange the newly listed shares for shares of another corporation. That is, the real purpose behind the issuance of the securities was not to acquire property but to raise additional working capital for the company, which circumvented the preemptive rights of the stockholders. Altschul admitted in his testimony that an independent inquiry into the details of the application

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227 See id. at 70-72.
228 See id. at 70.
229 See id. at 70-72.
230 See id. at 70-71.
231 See id. at 70-72.
232 See id.
233 See id.
might have brought these facts to light, and if the stock list committee had been aware of
the facts, the application would have been denied.\footnote{See id.} Altschul acknowledged that this was
a deficiency in the mechanics of the stock list committee.\footnote{See id.}

The New York Stock Exchange stock list committee also made errors in its
investigation of original listings. General Theatres Equipment applied for an original
listing on the New York Stock Exchange, which was subsequently approved by the stock
list committee.\footnote{See id. at 72-73.} The company did not disclose and the committee failed to discover an
enormous markup of $26 million.\footnote{See id.} Altschul explained that this lack of enforcement of
the listing standards resulted from the deception by the applying company.\footnote{See id.} Another
example of a failure to discover fraud in the listing application is the listing of Kreuger &
Toll debentures.\footnote{See id. at 73} The indenture permitted a substitution of pledged collateral that
Altschul, in hindsight, characterized as unique in that no American corporation had ever
been accorded a similar sweeping privilege.\footnote{See id.} When reviewing the application for listing,
however, the stock list committee never consulted with counsel regarding this provision
and never obtained an audited statement of Kreuger & Toll.\footnote{See id.} The committee merely
relied on the reputation of Ivan Kreuger.\footnote{See id.} After the listing was approved, Ivan Kreuger
substituted valuable securities with less valuable ones and the Exchange was never
informed.\footnote{See id.}
The New York Stock Exchange was not alone in its failure to enforce its listing standards. The Boston Stock Exchange had been repeatedly accused of significant laxity it enforcing its listing requirements.244 The Indiana Securities Commissioner removed the Boston Stock Exchange from the Indiana list of accredited exchanges in 1928.245 The Exchange was reinstated to the list in 1929 following an examination of the Exchange and statements by the Exchange that there would be a strict enforcement of its listing requirements.246 Nevertheless, on May 10, 1930, the Indiana Securities Commissioner lodged three complaints against the Boston Stock Exchange and requested a representative of the exchange to appear at a hearing to determine whether to remove Boston from the list of accredited exchanges.247 The Commissioner’s charges were that the Boston Stock Exchange (1) listed issues that had not had a proper distribution prior to listing; (2) exhibited general laxity in it listing standards enforcement and failed to properly examine applications prior to listing; and, (3) listed securities of corporations subsequent to their rejection by other exchanges.248 The Boston Stock Exchange refused to submit records and failed to make an appearance at the Commissioner’s hearing.249 The Exchange was subsequently removed from the accredited exchange list on July 2, 1930.250 The Indiana Commissioner declared that he received a letter from the Chairman of the National Securities Commissioner’s Association stating that if the Boston Stock Exchange persisted in its present stand he would recommend that it be barred from all states.

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245 See id. (quoting Commercial and Financial Chronicle, July 5, 1930, at 48.
246 See id. (quoting Commercial and Financial Chronicle, May 10, 1930, at 3283-84).
247 See id.
248 See id.
249 See id.
250 See id.
affiliated with the Association.\textsuperscript{251}

Even if the listing committees were fully staffed or facing a manageable number of applications, they were limited in their power to enforce the stock exchange listing standards. The problem generally arose from the fact that the stock exchanges were private, voluntary associations with no legal authority over corporations.\textsuperscript{252} The exchanges had no legal authority to compel companies to disclose information that they did not want disclosed.\textsuperscript{253} The only authority the exchange had was derived from their power to delist a corporation’s securities.\textsuperscript{254} However, a delisted corporation could simply move to another exchange with more lax listing requirements or to a curb exchange with virtually no required disclosures.\textsuperscript{255} Furthermore, if an exchange developed rules that corporations were unwilling to follow, the listed corporations could move to a more lax exchange.\textsuperscript{256} For example, when the New York Stock Exchange made certain reforms regarding the listing of investment trust securities, the bulk of the investment trust company securities moved to the New York Curb Exchange.\textsuperscript{257} Thus, the power of stock exchanges to set and enforce listing standards was ultimately limited by the listed corporations’ willingness to provide the information.

The Extent to which the Information Was Available from Other Sources

There were other potential sources of power to force corporations to disclose

\textsuperscript{251} See id.
\textsuperscript{252} See S. S. Huebner, The Stock Market 141.
\textsuperscript{253} See id.; 1914 Senate Hearings at 286; See Michael E. Parrish, Securities Regulation and the New Deal 38-39.
\textsuperscript{254} See 1914 Senate Hearings at 286.
\textsuperscript{255} See id. at 208.
\textsuperscript{256} See Twentieth Century Fund, Security Markets 236.
\textsuperscript{257} See Adolf A. Berle, Corporations and the Public Investor, 20 American Econ. Rev. 54, 70 (1930).
information including the stockholders, state corporate laws, and state Blue Sky laws. In fact, one might wonder why these alternatives were not the main regulators of corporate information. Certainly, the state had the power to force corporations to disclose any information it saw fit. The exchanges, as private organizations facilitating trading among the public, may have the responsibility to set rule to promote fair trading, but do not inherently have the duty to impose national standards of financial disclosure through their listing standards. The shareholders as a group are in the best position to determine what information they want, and if they are not in a position to force management to divulge that information, then the power of the state is the appropriate regulatory tool.

Nevertheless, the stock exchanges prior to 1934 were the main force in regulating the flow of information from the corporations to the shareholders and to the public. The other alternative sources of power, the shareholders, corporate law and the Blue Sky laws, proved to be inadequate.

Shareholders in the 1920s had become too numerous and too dispersed to effectively control the information disclosed by the corporations. At the same time, the greater separation of stockholders from the corporations put the stockholders in a position to need disclosures even more. In the past, stockholders were often closely tied to the management of the corporation and were in a better position to directly gather information. During the 1910s and 1920s there was a rapid increase in the number of shareholders in the United States and those shareholders were becoming more diffuse.

258 C.f. MICHAEL E. PARRISH, SECURITIES REGULATION AND THE NEW DEAL 38.
259 See TWENTIETH CENTURY FUND, SECURITY MARKETS 236.
260 See Adolf A. Berle, CORPORATIONS AND THE PUBLIC INVESTOR, 20 AMERICAN ECON. REV. 54, 58; TWENTIETH CENTURY FUND, SECURITY MARKETS 235.
261 See TWENTIETH CENTURY FUND, SECURITY MARKETS 50-54.
The total number of shareholders in 1900 was about 4.4 million. By 1920, the number of shareholders had increased to 12 million and again increased to 18 million by 1928. The change in the three largest corporations over the same years was dramatic. The United States Steel Corporation had 24,636 shareholders in 1902 and 174,507 in 1928, the Pennsylvania Railroad had 28,408 in 1902 and 241,391 in 1928, and American Telephone and Telegraph had 12,000 shareholders in 1902 which grew to 642,186 in 1928. As the stockholders became further separated from the management, their ability to control the flow of information from the corporation significantly declined. The stockholder in the late 1920s and early 1930s was in no position to demand that management do or refrain from doing any particular thing. The dispersion of stockholders also created a collective action problem that impeded the group of stockholders from forcing the corporation from disclosing more information. In short, the individual interest of the shareholder was made subservient to the will of the controlling group of managers.

Corporate law was another source of power to require corporations to disclose information; however, prior to 1934 the state corporate laws required little if any disclosures. The corporate documents, such as the charter and bylaws, were generally a matter of public record in the Secretary of State office of the state of incorporation. Furthermore, in practically every state, corporations were obligated to keep a list of stockholders on file, but this list was only available to the stockholders of the

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263 See id.
264 See id. at 53.
265 See id. at 277.
266 See id.
267 See id.
268 See id.
269 See id. at 318.
corporation.\textsuperscript{270} Virtually every state also contemplated an annual meeting at which time something in the nature of an annual report was customary.\textsuperscript{271} However, most shareholders in the 1920s and 1930s voted by proxy, thus they did not get the annual report unless it was distributed or published by the corporation, which was not required in most states.\textsuperscript{272} Some states, such as Massachusetts, required corporations to file an annual balance sheet, which became public record.\textsuperscript{273} Many states also required a list of officers and directors to be filed by the corporations.\textsuperscript{274} Thus, corporate law did not contribute much to the information flow from corporations prior to 1934. Moreover, the trend of changes in corporate law during the 1920’s actually shifted power from the shareholders to the management.\textsuperscript{275}

Some industries, including banking, insurance, public utilities and railroads were under special obligations to disclose information through government regulatory systems.\textsuperscript{276} Many states regulated the issuance of securities by bank corporations to some degree.\textsuperscript{277} State public utility commissions regulated the issues of public utility securities.\textsuperscript{278} The specific information the public utility commissions required varied widely among the states, and public utility holding companies were generally free from regulation.\textsuperscript{279} The Interstate Commerce Commission was empowered to approve all new issues of railroad

\footnotesize{\textsuperscript{270} See id.  
\textsuperscript{271} See id.  
\textsuperscript{272} See id.  
\textsuperscript{273} See id.  
\textsuperscript{274} See id.  
\textsuperscript{276} See Adolf A. Berle, \textit{Corporations and the Public Investor}, 20 AMERICAN ECON. REV. 54, 69.  
\textsuperscript{277} See id.  
\textsuperscript{278} See id.  
\textsuperscript{279} See ADOLF A. BERLE AND GARDINER C. MEANS, \textit{THE MODERN CORPORATION AND PRIVATE PROPERTY} 319.}
securities.\textsuperscript{280} Furthermore, the ICC required railroads to publish the holdings of the 20 largest shareholders, monthly income statements, annual balance sheets, and statements covering their business.\textsuperscript{281}

A fourth potential control on the disclosure of information, Blue Sky laws, were also inadequate. The first Blue Sky law was adopted in Kansas in 1911 to control the issuance of securities within the Kansas borders.\textsuperscript{282} By 1923, all states except Delaware and Nevada had adopted some form of state security regulatory statute.\textsuperscript{283} Delaware, the state with the greatest number of incorporations,\textsuperscript{284} did not enact its Blue Sky statute until 1931.\textsuperscript{285}

Although there were wide differences among states in the form of securities regulation, the Blue Sky laws generally fell into two categories: fraud acts and regulatory acts.\textsuperscript{286} Fraud acts provided for the detection and punishment of security frauds after they had been committed.\textsuperscript{287} New York, New Jersey, Maryland and Delaware enacted Blue Sky laws in this form.\textsuperscript{288} These acts did not require the disclosure of information at the time of sale; consequently, they added nothing to the information to investors.\textsuperscript{289} The rest

\textsuperscript{280} See Adolf A. Berle, \textit{Corporations and the Public Investor}, 20 AMERICAN ECON. REV. 54, 69.
\textsuperscript{281} See ADOLF A. BERLE AND GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 319.
\textsuperscript{284} See TWENTIETH CENTURY FUND, SECURITY MARKETS 200.
\textsuperscript{287} See id.
\textsuperscript{289} See FORREST B. ASHBY, THE ECONOMIC EFFECT OF BLUE SKY LAWS 8-9.
of the states enacted regulatory acts, which sought to prevent fraud before its perpetration by supervising the sellers of securities or the securities themselves. The regulatory acts generally required states’ approval for issues and transactions in certain securities. The regulatory systems often exempted certain securities such as government bonds or public utility securities and certain transactions such as sales to banks or transfers of securities in corporate mergers. Some of the regulatory acts were drafted only to apply to “speculative” issues. All of the regulatory acts required the issuer to submit information to the state commissioner for review prior to the contemplated issuance or transaction.

The Blue Sky laws were not effective in providing investors with information about the corporation for four reasons. First and foremost, the Blue Sky laws were easily and often avoided through interstate transactions. As early as 1915, the Investment Bankers Associated had reported to its members that they could ignore all Blue Sky laws by making offerings across state lines through the mails. Second, the statutes, when they applied, were riddled with exceptions, including total exemptions for securities listed on an accredited stock exchange. Third, there was significant variation of the information produced in each state, making comparisons of corporations ineffective.
Finally, few states devoted sufficient resources to the continuous supervision. 299 By 1933, only 8 states had developed separate commissions devoted to full time analysis, investigation, and regulation of securities. 300 In the other states the administration of the Blue Sky laws was conducted by overburdened agencies that were not specialized in securities such as railroad commissions, secretaries of state, attorneys general, insurance commissioners and bank examiners. 301

The Blue Sky laws, however, did have some effect on the enforcement of the listing standards of the stock exchanges. Many of the states with the regulatory form of Blue Sky laws exempted securities that were listed on an accredited exchange. 302 Michigan, for example, specifically exempted all securities listed on the New York Stock Exchange. 303 Other states exempted all stock exchanges in cities containing a population of 500,000 or greater that had been organized for a period of 20 years. 304 By 1930, the securities listed on the Chicago Stock Exchange were exempt from registration under the laws of more than half the states. 305 Similarly, the New York Curb Exchange was exempted from twelve states in 1929. 306 Accordingly, distributors frequently sought an exchange listing because it was the quickest and least expensive method of obtaining entry into the states in which they proposed to make their sales. 307 In fact, on some occasions when a seller of securities ran into difficulty in getting approval by the commission in some

299 See Michael E. Parrish, Securities Regulation and the New Deal 28.
300 See id.
301 See id.
of the states, the seller would have the security listed on one of the approved stock exchanges to avoid the state regulation.\textsuperscript{308} Thus, accreditation by the state security commissions would be a competitive advantage for an exchange. Consequently, the stock exchanges had an incentive to adopt sufficient listing standards to meet the approval of state security commissions.\textsuperscript{309} Furthermore, the state security commissions that desired meaningful exemptions had an incentive to investigate the adoption and enforcement of the exchange listing standards. The removal of the Boston Stock Exchange from the list of accredited exchanges by the Indiana securities commission indicates that this check on the enforcement of listing standards had some teeth.\textsuperscript{310}

The Extent to which the Data was Current

Much of the information in the listing application was only current at the time the application was submitted to the listing committee for review. The exchanges did not require any regular updating of the data in the listing application.\textsuperscript{311} The New York Stock Exchange, however, did require the corporations to agree to notify the Exchange of certain specific changes including: any change in the general character or nature of its business, any disposal of any property or stock that would impair or materially affect the corporations financial condition, any issuance or creation of any rights options, and any

\textsuperscript{308} See id. at 11, n.3 (quoting E.F. DONALDSON, BUSINESS ORGANIZATION AND PROCEDURE 304-305 (1938)).

\textsuperscript{309} See NEW YORK CURB EXCHANGE, REPORT OF THE PRESIDENT 1929 19 (reporting the Curb Exchange President’s “determined effort” to obtain the exemptions enjoyed by the other exchanges).

\textsuperscript{310} See supra at 36-37.

\textsuperscript{311} See Stock Exchange Practices: Hearings on S.Res.84 Before the Senate Comm. on Banking and Currency, 73rd Cong., 2nd Sess. Appendix to Parts 1, 2, and 3, 76-115.
charter amendments.\textsuperscript{312} However, the Exchange had not established procedures to enforce compliance with these agreements.\textsuperscript{313}

The financial information was more frequently updated than the other information in the listing application. Almost all corporations with stock listed on the New York Stock Exchange had agreed to publish annual reports.\textsuperscript{314} This was also true of the corporations listed on the major regional exchanges.\textsuperscript{315} Furthermore, the majority of corporations with stock listed on the Exchange published quarterly financial reports.\textsuperscript{316} In 1923, of the 957 corporations with stock on the New York Stock Exchange, 660 had agreements to publish quarterly reports.\textsuperscript{317} The other 297 corporations were listed before the Exchange adopted the quarterly report rule; thus, they were not bound by the rule.\textsuperscript{318} Of those 297 corporations, however, 212 were either railroads or public utility corporations and were required to publish frequent financial reports by government regulation.\textsuperscript{319}

Although frequent reports were required by most corporations listed on the exchanges, those reports were often published several months after the close of the period covered. Annual reports often appeared one to six months after the end of the fiscal year.\textsuperscript{320} The New York Stock Exchange recognized the problem of letting the corporations decide when to publish the report and amended its listing standards to

\begin{footnotesize}
\textsuperscript{312} See id. at 81-83.
\textsuperscript{313} See id. at 76-115.
\textsuperscript{314} See TWENTIETH CENTURY FUND, SECURITY MARKETS 589.
\textsuperscript{315} See 1914 Senate Hearings at 757-758; 865-867; 915-918.
\textsuperscript{316} See TWENTIETH CENTURY FUND, SECURITY MARKETS 589.
\textsuperscript{317} See id.
\textsuperscript{318} See id. at 590-91.
\textsuperscript{319} See id.
\textsuperscript{320} See id. at 591.
\end{footnotesize}
require the report to be published at least 15 days prior to the annual meeting. The Boston Stock Exchange also controlled the publication date by requiring the annual report to be distributed prior to or during the annual meeting. The unlisted securities and those securities listed prior to the adoption of these rules or on exchanges that did not require annual reports to be published were not subject to these restrictions.

The Extent to which the Data Was Available to the Public

The exchanges generally published the information disclosed through the listing process. The New York Stock Exchange had by 1914 established its practice of publishing the listing information to the members of exchange and furnishing the information to the daily New York newspapers and the financial press. Furthermore, the New York Stock Exchange made the information available to the public upon request. Other exchanges generally followed this system. The Detroit Stock Exchange, for example, only sent out a portion of the information of the listing corporation to a small number of institutions, newspapers, and individuals. The Detroit Stock Exchange amended that practice in 1927 and from then forward all of the information in the accepted applications was printed and distributed to the public. The Detroit Stock Exchange also annually distributed through its members a handbook of

322 See 1914 Senate Hearings at 866.
324 See 1914 Senate Hearings at 201-202.
325 See id.
327 See id.
328 See id.
statistical information concerning listed and unlisted Michigan corporations. The handbook included location of plants, subsidiary corporations, reports on stock price, dividends paid, and income statements and balance sheets.

The Extent to which the Data Had Value for the Public

The value of the data disclosed through the listing standards was limited by the lack of uniformity of the information. The public did not have sufficient information to make comparisons of the stock of corporations traded on the exchanges because the information presented was different in form and substance. Each exchange had their own form of application and process of publishing information. The financial reports, which contained the most important information for shareholders and prospective investors, varied to such a great extent in terms of adequacy, frequency and promptness that the information was often useless. Several of the regional stock exchanges recognized the problem of lack of uniformity and formed the Associated Stock Exchanges to consider solutions. The exchanges involved in the Association were the Baltimore, Cincinnati, Cleveland, Columbus, Detroit, Hartford, New Orleans, Philadelphia, Pittsburgh, St. Louis, and Washington stock exchanges. The Association, which only met once in 1927, considered the adoption of a uniform constitution, uniform schedule of

329 See id.
330 See id.
331 See Twentieth Century Fund, Security Markets 579.
333 See Twentieth Century Fund, Security Markets 580.
335 See id.
commissions, and a uniform listing application.  However, these efforts to standardize the information disclosed in the listing process were never adopted.

A more significant limitation on the value of the information was the lack of accounting standards, which caused the financial reports to be unreliable measures of value. There was no public control of financial reports for most corporations, thus the reports varied a great deal. Moreover, during the 1920s there had been some movement away from traditional conservatism and toward more liberal reporting practices. Furthermore, accountants in the 1920s were responsible to the board of directors, not to the public. Similarly, the directors generally appointed the auditors and could limit the scope of the audit as they saw fit. Railroad, banks, and public utility corporations, on the other hand, were under some governmental regulation of the form and substance of financial reports. Nevertheless, in numerous incidences, instead of disclosing, the reports succeeded in concealing the real financial conditions. Income statements and balance sheets could be greatly misleading, depending largely on the system of accounting employed and the competency and honesty of those entrusted to keep the corporate records. This problem was compounded by the corporations’ failure to disclose the

336 See id.
337 See id.
340 See id. at 92-93.
341 See id. at 93.
accounting methods used. The drafters of the Federal securities acts viewed these accounting practices with great concern because without adequate corporate reporting, the basis of stable investment is lacking. Thus, one of the great purposes of the Federal securities legislation was to bring the necessary degree of standardization to financial reporting.

There were several accounting techniques that corporations could use in income statements to manipulate or obfuscate the earnings figure. These techniques involved the treatment of depreciation, gross revenue, reserves, and income classifications. Depreciation, a key component in understanding the value of earnings, was often grouped with other items of expense in such a manner as to make it impossible to determine even approximately either the amount or adequacy of the charges. When depreciation was shown separately, the amount frequently applied to many different kinds of assets depreciated by undisclosed formulae. Gross income is also important information to evaluate earnings; however, gross income was not reported by 57 percent of the leading industrial corporations. Reserves were often presented in the income statement in lump sum. Finally, regarding income classifications, many corporations did not segregate operating from other income. Often, nonrecurring income was not separately reported

347 See id.
349 See id. at 582; Adolf A. Berle and Gardiner C. Means, The Modern Corporation and Private Property 203; Gadis J. Dillon, The Role of Accounting in the Stock Market Crash of 1929 159-169.
350 See Twentieth Century Fund, Security Markets 582.
351 See id.
352 See id.; Adolf A. Berle and Gardiner C. Means, The Modern Corporation and Private Property 203.
353 See Twentieth Century Fund, Security Markets 582.
but instead was lumped with other classes of income.\textsuperscript{354}

There were similar techniques used in the balance sheet regarding the treatment of surplus, inventories, current assets and consolidated balance sheets.\textsuperscript{355} Only about 20 percent of the balance sheets published in the 1920s were constructed to allow complete and intelligent interpretation.\textsuperscript{356} Corporations often combined surplus with income, and earned surplus and capital surplus were not distinguished, thus it was not possible to tell the source of available dividends.\textsuperscript{357} Inventories, which are important to evaluate the dependability of future earnings, were often disclosed with virtually no information concerning either the method of valuation or the nature of the goods.\textsuperscript{358} Corporations manipulated current assets by lumping together the reserves carried against them.\textsuperscript{359} Reporting only the total reserves against current assets made it impossible to compute the current position with any accuracy.\textsuperscript{360} Finally, consolidated balance sheets often did not include some of the important subsidiary companies, and no separate reports for the subsidiaries were published.\textsuperscript{361}

The New York Stock Exchange attempted to informally control the accounting practices of corporations listed on the Exchange.\textsuperscript{362} The Exchange, in its efforts to promote accurate accounting techniques, addressed several disfavored accounting methods used by listed corporations.\textsuperscript{363} Many corporations varied their depreciation

\textsuperscript{354} See \textit{id.}; 
\textsuperscript{355} See \textit{Twentieth Century Fund, Security Markets} 583. 
\textsuperscript{356} See \textit{Gadis J. Dillon, The Role of Accounting in the Stock Market Crash of 1929} 103. 
\textsuperscript{357} See \textit{id}. 
\textsuperscript{358} See \textit{id}. at 583-84. 
\textsuperscript{359} See \textit{id}. at 584. 
\textsuperscript{360} See \textit{id}. 
\textsuperscript{361} See \textit{id}. at 588. 
\textsuperscript{362} See \textit{id}. at 607. 
\textsuperscript{363} See \textit{id}.
policy from year to year.364 Parent corporations credited their income accounts with the undistributed earnings of non-wholly-owned subsidiaries.365 A number of listed companies charged cash dividends against capital surplus.366 Some companies charged against surplus an undue portion of plant values for the purpose of avoiding or reducing the charges against the income statements in respect to depreciation in future years.367 The Exchange also addressed the practice of writing off unamortized bond discounts and expense against capital surplus to avoid the proper charge against income throughout the life of the obligation.368 Corporations also inappropriately charged off inventory instead of charging against current income or income reserves.369 Finally, some corporations treated cash arising from the reacquisition or resale of corporate stock as profit rather than as capital or capital surplus.370

One of the reasons why the directors of corporations had such wide power in choosing accounting treatments is the fact that accountants had failed to work out a series of accounting standards.371 In fact, there was no real movement to set accounting standards until after the Securities Exchange Act of 1934 created the SEC which had the authority prescribe accounting and auditing practices.372 These attempts at setting standards eventually resulted in the creation of GAAP (Generally Accepted Accounting

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364 See id.
365 See id.
366 See id.
367 See id.
368 See id.
370 See TWENTIETH CENTURY FUND, SECURITY MARKETS 607.
The New York Stock Exchange in 1932 conferred with the American Institute of Accountants to create accounting standards for the corporations with securities listed on the Exchange. The AIA did create a set of suggested standards that generally addressed the problems detailed above. However, by 1933 the Exchange had not yet adopted them.

III. CONCLUSION

This review of corporate disclosures through the stock exchanges demonstrates that the historical claims made in the current debate over the regulation of securities are overstated to varying degrees. Clearly, the stock exchanges required less information than required by the Securities Exchange Act of 1934. Nevertheless, the stock exchanges, although entirely private organizations, were the strongest force in requiring corporate disclosures prior to 1934. State corporate laws were entirely inadequate and Blue Sky laws were ineffective. Furthermore, the listing standards had progressed over time, seemingly addressing problems as they were discovered. However, this progress may not be evidence of the stock exchanges good intentions toward the public because most of the important changes were the result of government investigation of the exchanges. The exchanges also hurt the disclosures made to the public by allowing unlisted trading and by not enforcing their own listing standards. Furthermore, the value of the information that was actually produced was limited because it was not current and not comparable. Finally, since there were virtually no accounting standards, the information actually

373 See id. at 1.
374 See TWENTIETH CENTURY FUND, SECURITY MARKETS 603.
375 See TWENTIETH CENTURY FUND, SECURITY MARKETS 596-598.
376 See id. at 605; MICHAEL E. PARRISH, SECURITIES REGULATION AND THE NEW DEAL 41.
disclosed by corporations was not a reliable measure of value. Thus, although the stock exchanges were the clear leaders in setting national financial disclosure standards, the level of corporate disclosures through the stock exchanges prior to 1934 was inadequate.
TABLE 1

<table>
<thead>
<tr>
<th>Exchange</th>
<th>1920</th>
<th>1928</th>
<th>1929</th>
<th>1932</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>332,440,400</td>
<td>1,525,018,217</td>
<td>1,849,454,014</td>
<td>561,729,033</td>
</tr>
<tr>
<td>NYSE</td>
<td>226,640,400</td>
<td>920,550,032</td>
<td>1,124,608,910</td>
<td>425,234,294</td>
</tr>
<tr>
<td>NY Curb</td>
<td>60,000,000</td>
<td>236,043,682</td>
<td>473,861,900</td>
<td>57,144,479</td>
</tr>
<tr>
<td>Total Other</td>
<td>45,800,000</td>
<td>368,424,503</td>
<td>250,983,204</td>
<td>79,350,260</td>
</tr>
<tr>
<td>Boston</td>
<td>6,696,423</td>
<td>19,069,761</td>
<td>24,625,115</td>
<td>10,299,561</td>
</tr>
<tr>
<td>Chicago</td>
<td>7,367,441</td>
<td>38,941,589</td>
<td>82,216,000</td>
<td>15,642,000</td>
</tr>
<tr>
<td>Detroit</td>
<td>2,494,789</td>
<td>10,227,019</td>
<td>114,346,65</td>
<td>2,775,956</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>18,916,976</td>
<td>49,403,086</td>
<td>15,406,993</td>
<td>3,068,749</td>
</tr>
<tr>
<td>Philadelphia</td>
<td>2,367,312</td>
<td>17,850,639</td>
<td>35,520,785</td>
<td>6,592,342</td>
</tr>
<tr>
<td>Pittsburgh</td>
<td>4,153,769</td>
<td>2,013,255</td>
<td>5,238,923</td>
<td>1,551,958</td>
</tr>
</tbody>
</table>


378 Huebner, supra n.1, suggests 35,538,000 as the total trading volume for non-New York exchanges; however the sum of the trading volumes reported for the regional exchanges in 1920 as collected by Cole, supra n.1, plus the 1920 trading volume for the Los Angeles Stock Exchange, supra n.1, suggests that the total non-New York trading volume is at least 45,800,000.

TABLE 2

<table>
<thead>
<tr>
<th>Exchange</th>
<th>July 1935</th>
<th>November 1935</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>39,743,994</td>
<td>92,857,174</td>
</tr>
<tr>
<td>NYSE</td>
<td>29,427,720</td>
<td>57,459,775</td>
</tr>
<tr>
<td>NY Curb</td>
<td>4,960,878</td>
<td>19,652,367</td>
</tr>
<tr>
<td>Total Other</td>
<td>5,355,396</td>
<td>15,745,032</td>
</tr>
<tr>
<td>Boston</td>
<td>434,765</td>
<td>759,961</td>
</tr>
<tr>
<td>Chicago</td>
<td>935,000</td>
<td>1,915,000</td>
</tr>
<tr>
<td>Denver</td>
<td>1,153,214</td>
<td>1,086,430</td>
</tr>
<tr>
<td>Detroit</td>
<td>523,802</td>
<td>755,493</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>533,157</td>
<td>1,060,715</td>
</tr>
<tr>
<td>Philadelphia</td>
<td>322,058</td>
<td>669,290</td>
</tr>
<tr>
<td>Pittsburgh</td>
<td>171,175</td>
<td>312,413</td>
</tr>
<tr>
<td>San Francisco</td>
<td>511,622</td>
<td>1,394,938</td>
</tr>
</tbody>
</table>

380 See SEC Report on Trading in Unlisted Securities at 34.
### TABLE 3

**Stock Issues Listed and Market Value, July 1, 1933**

<table>
<thead>
<tr>
<th>Exchange</th>
<th>Issues Listed</th>
<th>Total Share Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>6,088</td>
<td>$84,548,805,477.59</td>
</tr>
<tr>
<td>NYSE</td>
<td>1,237</td>
<td>$22,259,137,174.00</td>
</tr>
<tr>
<td>NY Curb</td>
<td>1,098</td>
<td>$12,853,982,966.00</td>
</tr>
<tr>
<td>Total Other</td>
<td>3,753</td>
<td>$49,435,685,337.59</td>
</tr>
<tr>
<td>Boston</td>
<td>280</td>
<td>$9,325,598,719.00</td>
</tr>
<tr>
<td>Chicago</td>
<td>393</td>
<td>$4,222,167,407.00</td>
</tr>
<tr>
<td>Cincinnati</td>
<td>191</td>
<td>$716,000,000.00</td>
</tr>
<tr>
<td>Cleveland</td>
<td>168</td>
<td>$665,137,316.60</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>105</td>
<td>$2,639,329,000.00</td>
</tr>
<tr>
<td>Los Angeles Curb</td>
<td>143</td>
<td>$8,823,013,946.00</td>
</tr>
<tr>
<td>Philadelphia</td>
<td>155</td>
<td>$3,745,083,366.00</td>
</tr>
<tr>
<td>Pittsburgh</td>
<td>93</td>
<td>$951,014,646.00</td>
</tr>
<tr>
<td>San Francisco</td>
<td>128</td>
<td>$2,487,331,622.00</td>
</tr>
<tr>
<td>San Francisco Curb</td>
<td>145</td>
<td>$6,170,617,661.00</td>
</tr>
</tbody>
</table>

### TABLE 4

**Total Securities on Registered Stock Exchanges, December 15, 1935**

<table>
<thead>
<tr>
<th>Exchange</th>
<th>Issues Listed</th>
<th>Shares Listed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>4,901</td>
<td>7,499,132,591</td>
</tr>
<tr>
<td>NYSE</td>
<td>1,175</td>
<td>1,308,858,205</td>
</tr>
<tr>
<td>NY Curb</td>
<td>1,085</td>
<td>773,586,084</td>
</tr>
<tr>
<td>Total Other</td>
<td>2,641</td>
<td>5,416,688,302</td>
</tr>
<tr>
<td>Boston</td>
<td>386</td>
<td>1,010,091,201</td>
</tr>
<tr>
<td>Chicago</td>
<td>298</td>
<td>203,310,104</td>
</tr>
<tr>
<td>Chicago Curb</td>
<td>56</td>
<td>238,670,272</td>
</tr>
<tr>
<td>Cincinnati</td>
<td>99</td>
<td>20,875,863</td>
</tr>
<tr>
<td>Cleveland</td>
<td>98</td>
<td>22,514,095</td>
</tr>
<tr>
<td>Denver</td>
<td>53</td>
<td>272,888,088</td>
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