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The FASB’s Sabotage of Congressional Policy and Federal Securities Laws

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THE FASB’S SABOTAGE OF CONGRESSIONAL POLICY AND FEDERAL SECURITIES LAWS

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Abstract

The Securities Exchange Commission (hereinafter “SEC” or “Commission”) was created by the Securities Exchange Act of 1934 and given exclusive authority to “make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers [and] to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts”\(^1\)

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\(^1\) Securities Act of 1933, Pub.L. 73–22; 15 U.S.C. §77s(a). The rules and regulations defining accounting prescribing the form in which required accounting information must be set forth and the items or details to be shown in the balance sheet and earning statement are referred to as “generally accepted accounting principles” (GAAP), described as the “standards” of accounting although not referred to as such in the Securities Act of 1933 (hereinafter “‘33 Act”) or the Securities Exchange Act of 1934 (hereinafter “‘34 Act”), except in a 2002 amendment to the ’33 Act in 1933 discussed infra.
From 1973 to 2002 the Financial Accounting Standards Board (hereinafter “FASB”), a private not-for-profit corporation, was recognized by the SEC to make, amend, and rescind rules defining accounting and prescribing the form in which the required accounting information must be set forth in the balance sheet and earning statement even though the SEC was not specifically authorized by law to recognize a private standard-setting body. In 2002 the SEC was specifically authorized by the Sarbanes Oxley Act to recognize private standard-setting bodies provided the standard-setting body met certain conditions. In 2002 the SEC recognized the FASB as the only private standard-setting body to develop accounting standards (“GAAP”).

This article argues and documents that from 1973 to the present the FASB has sabotaged the purpose for which the securities laws were enacted as well as Congressional policy to protect the nation from national emergencies caused by sudden and unreasonable fluctuations in the prices of securities which put the Federal Government to great expense, burdens the national credit, produces widespread unemployment, causes the dislocation of trade, transportation, and industry, burdens interstate commerce, and adversely affect the general welfare. Moreover, this article further argues that the SEC has been complicit in the FASB’s sabotage of the securities laws which the SEC was created to enforce, as well as that of Congressional policy that created the SEC.

The FASB’s sabotage of Congressional policy and securities laws clearly encompasses public policy issues, as does the SEC’s complicity in the FASB’s sabotage.

(NOITE: Since the accounting issues discussed herein deal with legal issues, the article is written in a format appropriate for law.)
INTRODUCTION

In 1933 and 1934 Congress enacted the first securities laws that laid the foundation for all subsequent securities laws. Congressional purpose for enacting the Securities Act of 1933 ("'33 Act")\(^2\) was “to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof.”\(^3\) Congressional purpose for enacting the Securities Exchange Act of 1934 ("'34 Act")\(^4\) was “to provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets.”\(^5\)

The rationale for regulating securities exchanges, and by extension the securities traded on securities exchanges, is declared in the '34 Act:

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest...\(^6\)

Congressional policy expressed in the '34 Act, and by extension the '33 Act, is an expression of the national public interest and the rationale for regulating securities exchanges: to protect interstate commerce, the national credit, the Federal taxing power, the national banking system and Federal Reserve System,

\(^3\) Pub.L. 73–22, supra note 2.
and to insure the maintenance of fair and honest markets in such transactions.\(^7\)

The rationale for Congressional policy expressed in the ’34 Act, and by extension the ’33 Act, is further explained in the subsequent paragraph: the prices of securities on security exchanges and markets are susceptible to manipulation and control resulting in sudden and unreasonable fluctuations in the prices of securities which in turn cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, and obstruct the effective operation of the national banking system and Federal Reserve System.\(^8\)

While the ’34 Act governs securities exchanges, the ’33 Act governs the securities that are traded on securities exchanges regulated by the SEC.\(^9\) Thus, under the ’33 Act, “Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise.”\(^10\) The registration statement required under the ’33 Act must be filed with the SEC\(^11\) in a form and containing the information required by SEC.\(^12\)

The ’33 Act and ’34 Act must be read in tandem since one without the other is incomplete and meaningless. Securities sold to the public can only be sold on exchanges regulated by the SEC.\(^13\)

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\(^9\) The ’34 Act created the Securities Exchange Commission. See Section III, infra.
\(^12\) 15 U.S.C. §77s(a)
\(^13\) For example, the New York Stock Exchange, the American Stock Exchange, and the Nasdaq.
and they cannot be sold on exchanges regulated by the SEC unless there is a registration filed with the SEC pursuant to the ’33 Act. Thus, Congressional policies of both acts are interdependent.14

The SEC was given exclusive authority under the ’33 Act “to make, amend, and rescind rules and regulations…defining accounting” as well as “the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income…”15 for all securities sold on securities exchanges.

14 The interdependence of the two acts is further confirmed by the Sarbanes Oxley Act of 2002 which amended the ’33 Act. The Sarbanes Oxley Act authorizes the Commission to recognize a private standard setting body if the body is capable of assisting the Commission in fulfilling the requirements of the ’34 Act. 15 U.S.C. § 77s(b).

15 “The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade terms used in this title. Among other things, the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.” (15 U.S.C. §77s(a)).
The primary purpose of the ’34 Act and therefore also of the ’33 Act is not, and cannot be, to protect investors. Protecting investors is important. However, the primary purposes of the ’34 Act, and therefore of the ’33 Act, is a matter of national public interest in order to prevent national emergencies caused by sudden and unreasonable fluctuations in the prices of securities which put the Federal Government to great expense, burdens the national credit, produces widespread unemployment, causes the dislocation of trade, transportation, and industry, burdens interstate commerce, and adversely affect the general welfare. The primary purpose, therefore, is greater than protecting investors from manipulation and fraud in the sale of securities which is the secondary purpose.

Preventing fraud in the sale of securities by providing full and fair disclosure of the character of securities does not protect the nation from national emergencies caused by sudden and unreasonable fluctuations in the prices of securities. If the nation and the public are protected from national emergencies caused by sudden and unreasonable fluctuations in the prices of securities, then investors are likewise protected. However, the converse is not true. If investors are protected from sudden and unreasonable fluctuations in the prices of securities, the nation is not necessarily protected from national emergencies caused by sudden and unreasonable fluctuations in the prices of securities.

Thus, since the effects of national emergencies caused by sudden and unreasonable fluctuations in the prices of securities are national in scope, i.e., greater than the effects upon investors, the primary purposes of the ’34 Act, and thus of the ’33 Act, is to protect the nation from sudden and unreasonable fluctuations in the prices of securities.

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prices of securities which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare.\textsuperscript{19}

Although the SEC was not specifically authorized by law to recognize the FASB as the designated standard-setter, since its formation in 1973 the FASB was recognized by the SEC as the standard-setter for developing rules and regulations defining accounting, \textsuperscript{20} including the items or details to be shown in the balance sheet and earning statement (GAAP).\textsuperscript{21} In 2002 the Sarbanes-Oxley Act specifically authorized the SEC to recognize a private standard-setter provided the standard-setting body met certain conditions.\textsuperscript{22} In 2002 the SEC recognized the FASB as the sole designated private standard-setter.\textsuperscript{23}

This article argues, and documents, that the FASB, as both the unrecognized\textsuperscript{24} and recognized designated private standard setter, has not just neglected to fulfill its responsibilities to set standards of accounting that protect the nation and the public from sudden and unreasonable fluctuations in the prices of securities,

\textsuperscript{19} 15 U.S.C. §78b.
\textsuperscript{21} 15 U.S.C. § 77s(a).
\textsuperscript{24} The FASB was recognized by the SEC in 1973 to develop GAAP. However, it was not authorized by law to do so until 2002 at which time the FASB was officially recognized.
but the FASB has actually sabotaged Congressional policy and the securities laws that created the SEC designed to protect the nation from sudden and unreasonable fluctuations in the prices of securities. It has not only failed to assist the Commission in improving the accuracy and effectiveness of financial reporting intended to protect the nation from national emergencies, but has diverted resources and, much like the magician’s assistant, the attention of the public away from standards that protect the nation from national emergencies toward standards focusing on user decision making and cash flows.\textsuperscript{25} This article further argues that the SEC has been complicit in the FASB’s sabotage of Congressional policy and the securities laws that created the SEC.

The rest of the paper is organized as follows. First, the Securities Act of 1933 will be examined. Second, the 1934 Securities Exchange Act will likewise be examined. The purpose for examining the two Acts is to firmly establish the mission of the SEC and Congressional policy as articulated in the Acts. Third, the history of the FASB will be briefly reviewed beginning with its original creation in 1973 to the present. Fourth, the objective of financial reporting as determined by the FASB will be examined in detail. The history of the FASB and the objective of financial reporting as determined by the FASB will provide the setting to support the argument that the FASB has sabotaged the securities laws and Congressional policy.

The fifth section will discuss how the FASB has sabotaged the securities laws and Congressional policy along with the complicity of the SEC. Finally, the conclusion will establish the serious gap between Congressional policy and the purposes for creating the SEC and the purposes of financial reporting and accounting standards as determined by the FASB which, along with the complicity of the SEC, has sabotaged the securities laws and Congressional policy.

SECURITIES ACT OF 1933

The ’33 Act and ’34 Act were enacted on the heels of the stock market crash of 1929 which ushered in the Great Depression creating a national emergency.\(^\text{26}\) The national emergency produced widespread unemployment and the dislocation of trade, transportation, and industry, burdened national credit and interstate commerce, adversely affected the general welfare, and put the Federal Government to great expense. To deal with the national emergency Congress created the Securities Exchange Commission and conferred upon it broad and exclusive powers to regulate national securities exchanges and the securities traded on national securities exchanges.

In furtherance of the Securities Exchange Commission’s regulatory power over securities for the purpose of preventing national emergencies that result from sudden and unreasonable fluctuations in the prices of securities, the SEC was given exclusive authority to make, amend, and rescind rules and regulations defining accounting including “the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income…”\(^\text{27}\)


\(^{27}\) “The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade terms used in this title. Among other things, the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which required information shall be set forth, the
Thus, while the ’33 Act made it unlawful for any person to sell in interstate commerce any security for which a registration statement required to be filed with the SEC is not in effect, the ’34 Act created the Securities Exchange Commission and empowered it to adopt rules and regulations defining the items or details to be shown in the balance sheet and earning statement in the registration statements and annual reports required to be filed with the Commission.

The purpose for conferring upon the SEC the exclusive authority to make rules and regulations defining accounting and the items or details to be shown in the balance sheet and earning statement was primarily to protect the nation from national emergencies caused by sudden and unreasonable fluctuations in the prices of securities which cause unreasonable expansion or unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce. Protecting investors from sudden and unreasonable fluctuations in the prices of securities by providing full and fair disclosure of the character of securities was the secondary purpose.

From its creation in 1934 the SEC handed off a large part of its responsibility for making rules and regulations defining accounting to other entities, first to the American Institute of Certified Public Accountants (AICPA) from 1934 to 1973, and

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30 Id.
31 Wm. Dennis Huber, supra, note 16.
second to the FASB from 1973 to the present. The SEC’s delegation of standard setting to private standard setting bodies, which Robert Chatov considered an abdication of the SEC’s responsibilities, while not explicitly prohibited, was not explicitly sanctioned by securities laws prior to the enactment of the Sarbanes Oxley Act in 2002. In 2002 the ’33 Act was amended by the Sarbanes Oxley Act to explicitly authorize the SEC to recognize a private standard setting body provided the private standard-setting body met certain conditions. One of those conditions is that the private standard-setting body is organized as a private entity, has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm; (iii) is funded as provided in section 7219 of this title; (iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of

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33 “Accounting standards” and “standard setting bodies” were not terms used in either the ’33 Act or the ’34 Act until the Sarbanes Oxley Act of 2002.

34 Robert Chatov, supra, note 32.

35 Public Law 107–204.

36 U.S.C. § 77s(b) (2012). (“Recognition of accounting standards (1) In general In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(b)], the Commission may recognize, as ‘generally accepted’ for purposes of the securities laws, any accounting principles established by a standard setting body— (A) that— (i) is organized as a private entity; (ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm; (iii) is funded as provided in section 7219 of this title; (iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and (v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of...
conditions, relevant here, was the capacity of the private standard setting body “to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.”

Since the standard setting body must be capable of improving the accuracy and effectiveness of financial reporting not under the securities law, but under the securities laws, more than the ’33 Act is understood; i.e., the standard setting body must be capable of improving the accuracy and effectiveness of financial reporting under both the ’33 Act and the ’34 Act and therefore the purposes of both acts are encompassed in the requirement that the private standard setting body must be “capable of improving the accuracy and effectiveness of financial reporting.”

Subsection (a) grants the Commission exclusive authority

to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade terms used in this title. Among other things,

investors; and (B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(b)], because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws. (2) Annual report. A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.”) Note that 15 U.S.C. § 77s(b) does not specify the legal form of a standard setting body that can be recognized by the SEC. But see Wm. Dennis Huber supra, note 22.

37 15 U.S.C. §77s(b) (emphasis added).
the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement…\textsuperscript{38}

Section 13(b) of the Securities Exchange Act of 1934 authorizes the SEC to “prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earnings statement, and the methods to be followed in the preparation of reports…”\textsuperscript{39} for consistent with the primary purpose of preventing national emergencies.

Within weeks after the Sarbanes Oxley Act was signed into law by President Bush in July 2002, the FAF and FASB submitted a letter to the SEC declaring, without evidence that it met the conditions set forth in the Sarbanes-Oxley Act.\textsuperscript{40} In April, 2003 the SEC issued a policy statement, citing no evidence, that the FASB did in fact meet the Sarbanes-Oxley criteria.\textsuperscript{41} Neither the FASB nor the SEC explained how the FASB is “capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws” thus leaving unanswered how the FASB is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws

\textsuperscript{38} 15 U.S.C. §77s(a).
\textsuperscript{39} 15 U.S.C. §78m(b)(1).
\textsuperscript{40} Letter from Robert H. Herz, Chairman, Financial Accounting Standards Board and Manuel H. Johnson, Chairman and President, Financial Accounting Foundation, to The Honorable Harvey L. Pitt, Chairman, Sec. and Exchange Comm’n (Aug. 16, 2002) (on file with the author),
\textsuperscript{41} Reaffirming the Status of the FASB, supra note 23.
SECURITIES EXCHANGE ACT OF 1934.

While there were many factors that contributed to the national emergency that resulted from the stock market crash of 1929, one of the factors as determined by Congress was the unreasonable fluctuations in the prices of securities which in turn caused the unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce and which obstructed the effective operation of the national banking system and Federal Reserve System. The Securities Exchange Commission was created by the ’34 Act to regulate securities exchanges and to enforce the mandates of the ’33 Act along with additional mandates of the ’34 Act with the intention of preventing national emergencies resulting from sudden and unreasonable fluctuations in the prices of securities. Previously, enforcing the mandates of the ’33 Act was under the jurisdiction of the Federal Trade Commission.

The purpose for creating the SEC and conferring upon it the exclusive jurisdiction over matters related to securities was not only to regulate securities exchanges, but also the securities traded on the exchanges so as to prevent national emergencies. Congress declared that such “National emergencies…produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national

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Therefore, the SEC was created and given the exclusive authority to make, amend, and rescind rules and regulations defining accounting and the items or details to be shown in the balance sheet and earning statement, in order to eliminate, or at least reduce, the risk of future national emergencies of the kind caused by the stock market crash of 1929 that put the Federal Government at great expense, burdened the national credit, produced widespread unemployment, caused the dislocation of trade, transportation, and industry, burdened interstate commerce, and adversely affected the general welfare.\(^{46}\)

The official Congressional finding as declared in the ’34 Act was that

\[\text{Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective}\]


operation of the national banking system and Federal Reserve System.\textsuperscript{47}

The ’34 Act requires “every issuer of a security registered pursuant to section 12 of this title [to] file with the [Securities Exchange] Commission…for the proper protection of investors and to insure fair dealing in the security—such information and documents…as the Commission shall require…annual reports…certified…by independent public accountants.”\textsuperscript{48} The annual reports are required to comply with the same requirements as set forth for the registration statements in the ’33 Act.\textsuperscript{49} Section 12 of the ’34 Act set forth the registration requirements for securities.\textsuperscript{50}

THE FINANCIAL ACCOUNTING FOUNDATION AND THE FINANCIAL ACCOUNTING STANDARDS BOARD.

It is important to understand the evolution of the FASB and its purpose in order to understand how it sabotaged the securities laws and Congressional policy. The FASB is not a legal entity. The FASB is a board created by and whose members are appointed by a private not-for-profit corporation, the Financial Accounting Foundation (FAF). Therefore, the FAF must first be examined.

\textsuperscript{47} 15 U.S.C. §78b.
\textsuperscript{48} 15 U.S.C. §78m(a).
\textsuperscript{49} The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earnings statement…” (15 U.S.C. §78m(b)(1)).
\textsuperscript{50} 14 U.S.C. 78l.
The Financial Accounting Foundation

The FAF was incorporated in Delaware in 1972.\(^{51}\) It was created to assume the responsibilities of the AICPA’s Accounting Principles Board to set standards for financial accounting reporting; i.e., GAAP.\(^{52}\) The FAF created the FASB in its articles of incorporation.\(^{53}\) The Articles of Incorporation of the FAF have been amended several times since its initial incorporation but the original purpose remained the same.

The 1972 Articles of Incorporation. The 1972 Articles of Incorporation declared the purposes of the FAF as follows:

[T]o advance and to contribute to the education of the public, investors, creditors, preparers, and suppliers of financial information, reporting entities, and certified public accountants in regard to standards of


\(^{53}\) “There shall be a Financial Accounting Standards Board (the “FASB”) to which there is hereby delegated all authority, functions, and powers of the Corporation and the Board of Trustees in respect of standards of financial accounting and reporting (other than in respect of activities and transactions of state and local governmental entities), including the conduct of all activities related thereto not reserved to the Board of Trustees or others in this Restated Certificate or in the By-Laws, which authority, functions, and powers shall be exercised by the FASB in conformity with the By-Laws.” Fin. Accounting Found., supra note 51.
financial accounting and reporting; to establish and improve the standards of financial accounting and reporting by defining, issuing, and promoting such standards; to conduct and commission research, statistical compilations, and other studies and surveys; and to sponsor meetings, conferences, hearings, and seminars, in respect of financial accounting and reporting.\textsuperscript{54}

The FAF is comprised of 14-18 members and consists of users, preparers, and auditors of financial statements; state and local government officials; academics; and regulators.\textsuperscript{55} The trustees are appointed by the trustees.\textsuperscript{56}

**The 2002 Articles of Incorporation.** The FAF amended its Articles of Incorporation after the Sarbanes-Oxley Act of 2002 was signed into law in an attempt to comply with the requirements of the Sarbanes Oxley Act that explicitly authorized the SEC to recognize a private standard setting body.\textsuperscript{57} The amended Articles of Incorporation clearly reaffirm the purposes of the FAF to be:

\[
[T]o \text{ advance and to contribute to the education of the public, investors, creditors, preparers, and suppliers of financial information, reporting entities, and certified public accountants in regard to standards of}
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\textsuperscript{54} Fin. Accounting Found., supra note 51.  
\textsuperscript{55} FAF Trustees and Committees. Available at https://www.accountingfoundation.org/trustees. Last accessed December 31, 2018  
\textsuperscript{56} Fin. Accounting Found., supra note 51.  
\textsuperscript{57} Wm. Dennis Huber, supra, note 22.
financial accounting and reporting; to establish and improve the standards of financial accounting and reporting by defining, issuing, and promoting such standards; to conduct and commission research, statistical compilations, and other studies and surveys; and to sponsor meetings, conferences, hearings, and seminars, in respect of financial accounting and reporting.58

In order to meet the Sarbanes Oxley Act authorizing the SEC to recognize a private standard setting body, the FAF’s 2002 Articles of Incorporation created the FASB, already in existence, with substantially equivalent language:

There shall be a Financial Accounting Standards Board (the “FASB”) to which there is hereby delegated all authority, functions, and powers of the Corporation and the Board of Trustees in respect of standards of financial accounting and reporting (other than in respect of activities and transactions of state and local governmental entities), including the conduct of all activities related thereto not reserved to the Board of Trustees or others in this Restated Certificate or in the By-Laws, which authority, functions, and powers shall be exercised by the FASB in conformity with the By-Laws.59

58 Fin. Accounting Found., supra note 51.
59 Id.
Even though the FAF was aware that one of the criterion authorizing the SEC to recognize a private standard setting body provided that the private standard setting body was able “to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws,” the 2002 Articles of Incorporation omits any new provision that identifies its mission as assisting the SEC in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934 or improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

The 2012 Articles of Incorporation. The Articles of Incorporation were amended again on October 19, 2012. The purposes remained the same as the 1972 and 2002 Articles of Incorporation:

[T]o advance and to contribute to the education of the public, investors, creditors, preparers, and suppliers of financial information, reporting entities, and certified public accountants in regard to standards of financial accounting and reporting; to establish and improve the standards of financial accounting and reporting by defining, issuing, and promoting such standards; to conduct and commission research, statistical compilations, and other studies and surveys; and to sponsor meetings, conferences, hearings, and

seminars, in respect of financial accounting and reporting.  

The 2012 Articles of Incorporation again created the FASB, already in existence, and again omits from its purpose any language identifying its purpose as assisting the SEC in fulfilling the requirements of section subsection (a) and section 13(b) of the Securities Exchange Act of 1934 or improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

THE FINANCIAL ACCOUNTING STANDARDS BOARD

The FASB is not a legal entity, so it has no articles of incorporation. The 1972 Articles of Incorporation of the FAF created the FASB: “There shall be a Financial Accounting Standards Board in which the Bylaws shall rest sole and exclusive responsibility, power and authority in respect of standards of financial reporting…” The FASB was then formally established in 1973.

The mission of the FASB is “to establish and improve financial accounting and reporting standards to provide useful information to investors and other users of financial reports and educate stakeholders on how to most effectively understand and implement those standards.” The members of the FASB are appointed by the FAF.

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61 Fin. Accounting Found., supra note 51.
62 Id.
64 Id.
65 Id.
THE FASB AND THE OBJECTIVE OF FINANCIAL REPORTING

When the FASB was established in 1973 it immediately began developing Statements of Financial Accounting Standards (“SFAS” known as GAAP) and Statements of Financial Accounting Concepts (“SFAC”). The Statements of Accounting Concepts identify the objective of financial reporting as determined by the FASB as well as lay the groundwork for establishing future GAAP.66

Statements of Financial Accounting Standards.

From its inception in 1973 to 2009 FASB issued numerous Statements of Financial Accounting Standards. SFASs are the actual GAAP with which firms issuing securities to the public must comply when filing registration statements and annual reports with the SEC. Some SFASs apply to all issuers in all industries while others apply only to specific industries such as Entertainment, Airlines, and Financial Services.67 SFASs prescribe standards how to report income and expenses, for such things as reporting for insurance contracts, leases, derivatives, pensions, and others.68 All SFASs were superseded in 2009 by the FASB Accounting

Standards Codification ("Codification") which incorporated the previous SFASs.\footnote{FASB Codification. supra note 67.}

The SFASs and subsequent Codification of the Standards are extremely detailed and at times quite confusing. The particular standards and GAAP embodied in the SFASs and Codification are beyond the scope of this article and not directly relevant to the argument that the FASB has sabotaged the securities laws and Congressional policy. What is important is to recognize that the SFASs and Codification have made progress toward achieving one, and only one, of the purposes for enacting the Securities Act of 1933; namely, “To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof.”\footnote{15 U.S.C. §77.}

But it is more important to recognize that the SFASs and Codification have not just failed but, by its own admission, have failed to make progress toward achieving the overriding purpose of the securities laws: protecting the nation from national emergencies resulting which put the Federal Government to great expense, burdens the national credit, produces widespread unemployment, causes the dislocation of trade, transportation, and industry, burdens interstate commerce, and adversely affect the general welfare.

Statements of Financial Accounting Concepts


Concepts Statements No. 2 and No. 3 were issued in 1980.\footnote{FASB. Statement of Financial Accounting Concepts No. 2, Qualitative Characteristics of Accounting Information, available at...}
Concepts Statement No. 5 was issued in 1984. Each Concepts Statements has been amended from time to time. The FASB’s Statements of Financial Accounting Concepts are intended to serve the public interest by setting the objectives, qualitative characteristics, and other concepts that guide selection of economic phenomena to be recognized and measured for financial reporting and their display in financial statements or related means of communicating information to those who are interested. Concepts Statements guide the Board in developing sound accounting principles and provide the Board and its constituents with an understanding of the

appropriate content and inherent limitations of financial reporting. A Statement of Financial Accounting Concepts does not establish generally accepted accounting standards.\textsuperscript{76}

Concepts Statement No. 1 and No. 2. Concepts Statements No. 1 and No. 2 are of particular importance because together they reveal both how and why the FASB has sabotaged the securities laws and Congressional policy.

Concepts Statement No. 1 was issued in 1978, five years after the FASB was formally organized. Concepts Statement No. 1 is the first in a series of Statements of Financial Accounting Concepts. The purpose of the series is to set forth fundamentals on which financial accounting and reporting standards will be based. More specifically, Statements of Financial Accounting Concepts are intended to establish the objectives and concepts that the Financial Accounting Standards Board will use in developing standards of financial accounting and reporting.\textsuperscript{77}

SFACs admittedly do not establish GAAP.\textsuperscript{78} Rather, they establish, at least for the FASB, what financial reporting is and what it is intended to do. The FASB has determined that the objective of Financial reporting is intended to provide information

\textsuperscript{76} FASB. Concepts Statements, available at https://www.fasb.org/jsp/FASB/Page/PreCodSectionPage&cid=1176156317989, last accessed December 1, 2018 (emphasis added).

\textsuperscript{77} FASB. Statement of Financial Accounting Concepts No. 1, supra note 71.

\textsuperscript{78} FASB. Statement of Financial Accounting Concepts No. 8.
that is useful in making business and economic decisions. More specifically, “The function of financial reporting is to provide information that is useful to those who make economic decisions about business enterprises.”

SFAC No. 1 then identifies those who make economic decisions about business enterprises. According to SFAC No. 1, “financial reporting is directed toward the common interest of various potential users in the ability of an enterprise to generate favorable cash flows...Thus, the objectives in this Statement are focused on information for investment and credit decisions.”

Concept Statement No. 2 issued in 1980 clarifies the objectives of financial reporting as determined by the FASB. “The objectives focus financial reporting on a particular kind of economic decision—committing (or continuing to commit) cash or other resources to a business enterprise with expectation of future compensation or return, usually in cash...”

Concepts Statement No. 2 emphasized, rightly so, that the Board rejects the view that financial accounting standards should be slanted to favor one economic interest over another. The Board does, however, “consider the probable economic impact of its standards as best it can and will monitor that impact as best it can after a standard goes into effect,” but only insofar as an “unforeseen economic effect of a particular standard may point to a deficiency in the standard in that it does not result in the faithful representation of economic phenomena that was intended. It would then be necessary for the standard to be revised” in order for the standard to be a faithful representation of the economic phenomena that it was intended to represent. So even though a standard may have an unforeseen economic effect such as precipitating a national emergency producing widespread unemployment and the

79 Id., at ¶BC1.9. 
80 FASB. Statement of Financial Accounting Concepts No 1 at ¶16. 
81 Id. at ¶30. (emphasis added). 
dislocation of trade, transportation, and industry, burdening national credit and interstate commerce, adversely affect the general welfare, and putting the Federal Government to great expense, the standard will not be revised as long as the standard is a faithful representation of the economic phenomena that it was intended to represent.

Concepts Statement No. 8: The FASB Conceptual Framework

Concepts Statements 1 through 3 and 5 through 7 were superseded in 2010 by Concepts Statement No. 8. Much of Concepts Statement No. 8 is a reaffirmation of Concept Statements 1 and 2. The FASB Concepts Statement No. 8, issued in 2010, is frequently referred to simply as The Conceptual Framework. However, that is both inaccurate and confusing as there is more than one conceptual framework. Conceptual Framework projects have also been initiated in the U.K, Canada, and Australia, as well as by the International Accounting Standards Board.84 The various versions of the FASB Conceptual Framework have been debated and heavily criticized in the accounting literature. However, it has received little attention among legal scholars.

FASB Financial Concepts No 8, Conceptual Framework for Financial Reporting, contains two chapters, Chapter 1, The Objective of General Purpose Financial Reporting, and Chapter 3, Qualitative Characteristics of Useful Financial Information.85 (There is no Chapter 2.)


The 2010 FASB Conceptual Framework has determined that there is only one objective of financial reporting: “to provide financial information about the reporting entity that is useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the entity.” It is that single objective that forms the foundation of the Conceptual Framework and guides the establishment of the standards of accounting (GAAP).

What the Conceptual Framework describes as qualitative characteristics of financial reporting, discussed infra, flow logically from the single objective of providing financial information about the reporting entity that is useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the entity. The decisions by existing and potential investors, lenders, and other creditors involve buying, selling, or holding equity and debt instruments, loans, or other forms of credit. Qualitative characteristics do not provide information. Rather they describe the quality of the information provided.

General purpose financial reports are not primarily directed to regulators, the public, or other parties. The Board concluded that expanding the objective of financial reporting beyond providing financial information about the reporting entity that is useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the

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90 Id. at QB10.
entity “would be inconsistent with its basic mission, which is to serve the information needs of participants in capital markets.”

Concepts No. 8 contains the same single objective of financial reporting as the previous version and maintains the same focus on users and decision making, but with additional explanation. The 2010 version is “more direct by focusing on users making decisions about providing resources…” The reason, the Board explained, is because “The Board’s… responsibilities require them to focus on the needs of participants in capital markets…”

THE FASB’S SABOTAGE OF FEDERAL SECURITIES LAWS AND CONGRESSIONAL POLICY.
Congressional purpose and objective of securities laws.

No one can argue that the objectives identified by the FASB beginning with SFAC No. 1 in 1978 and continuing through the 2018 FASB Conceptual Framework do not, at least partially, reduce the risk of fraud and manipulation of securities prices by issuers of securities which is consistent with the rationales for enacting both the ’33 Act and the ’34 Act. But did Congress intend to provide full and fair disclosure of the character of securities prevent frauds in the sale securities as the only, or even the primary, reason for enacting the ’33 Act, or to prevent

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91 FASB, Statement of Financial Accounting Concepts No. 8 at BC1.23 (emphasis added).
92 Id. at BC1.13 (emphasis added).
93 Id. at BC1.16 (emphasis added).
94 “To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof” (15 U.S.C. §77) and “To provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets” (15 U.S.C. §78).
inequitable and unfair practices on exchanges and markets as the only, or even the primary, reason for enacting the ’34 Act?

To answer that question requires a review first of Congressional findings and second of the hierarchy of purposes identified in Congressional policy of the ’34 Act. First,

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary:

- to provide for regulation and control of such transactions and of practices and matters related thereto;
- to require appropriate reports, refers back to ’33 Act
- to remove impediments to and perfect the mechanisms of a national market system for securities, and
- to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect:
  - interstate commerce,
  - the national credit,
  - the Federal taxing power,
  - to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions.95

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95 15 U.S.C., § 78(b) (emphasis added).
What are those reasons Congress hereinafter enumerated that generated a national public interest in regulating and controlling securities and securities exchanges? Congress finds that the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which
  o (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce,
  o (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and
  o (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective operation of the national banking system and Federal Reserve System.96

But most importantly, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest because Congress finds that

96 Id.
National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit.\footnote{Id.}

A close inspection of Congressional findings reveals Congress omitted several reasons for imposing requirements for regulation and control of securities and securities exchanges. Congress omitted any reference to users, user decision making, or providing information that is useful in making decisions about providing resources to the entity. All regulation and control is is for the primary purpose of protecting the nation from national emergencies which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, and put the Federal Government to great expense as to burden the national credit.

If Congress had only been concerned with preventing fraud in the sale of securities there is no legitimate justification for Congressional policy to prevent national emergencies by providing for the regulation and control of transactions and practices in the sale of securities or imposing requirements necessary in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking
system and the Federal Reserve System. Financial reporting fraud, even by Enron or WorldCom, does not by itself put the federal government to great expense, burden the national credit, produce widespread unemployment, cause the dislocation of trade, transportation, and industry, burden interstate commerce, and adversely affect the general welfare.

It is indisputable that the primary intent of Congressional policy in enacting the Securities Act of 1933 and the Securities Exchange Act of 1934 was to prevent national emergencies. And Congress authorized the Commission to recognize private standard setting bodies to assist the Commission in making financial reporting more effective in achieving that policy provided the private standard setting body met certain conditions.

One of those conditions was the capacity of the private standard setting body “to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.”98 Since the standard setting body must be capable of improving the accuracy and effectiveness of financial reporting under the securities laws, more than the ’33 Act is necessarily incorporated in the conditions; i.e., the standard setting body must be capable of improving the accuracy and effectiveness of financial reporting under both the ’33 Act and the ’34 Act and therefore Congressional policy and purposes of both acts are encompassed.99

Neither the ’33 Act nor the ’34 Act define either “accuracy” or “effectiveness.” The definition of “accuracy” is “the quality or state of being correct or precise; the degree to which the result of a measurement, calculation, or specification conforms to the correct

99 The fact that the conditions for recognizing a private standard setting body incorporates both the ’33 Ac and ’34 Act demonstrates conclusively that the two acts must be read together.
value or a standard.”

“Effectiveness” is defined as “the degree to which something is successful in producing a desired result; success.”

Obviously, Congress could not mean by “accuracy” mere arithmetic accuracy. Arithmetic accuracy is within the purview of auditors, not standard setters. Accuracy means how accurate financial reports are consistent with accounting standards. Standard setters have no jurisdiction over compliance with accounting standards and Congress was well aware of that. “Accuracy” must be read in the context of the purpose of the securities laws. Thus, since accuracy does not, and cannot, mean arithmetic accuracy, “improving the accuracy” can only refer to how accurate financial reporting reflects the purpose of the securities laws which is to protect the nation from national emergencies.

In the context of “capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws,” the desired result is the result for which Congress enacted the securities laws. Congressional policy was not to provide information for users to make predictions of positive net cash flows. Therefore, improving the “effectiveness” includes “defining accounting” and therefore improving the “effectiveness” necessarily refers to effectiveness in achieving the totality of purpose of the ’33 Act and ’34 Act to prevent national emergencies and the aftereffects thereof.

THE FASB’S OBJECTIVE OF FINANCIAL REPORTING.

In 2002 Congress authorized the SEC to recognize private standard setting bodies provided they were able to assist the Commission in improving the accuracy and effectiveness of

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financial reporting and the protection of investors under the securities law.\textsuperscript{102}

Although the SEC recognized the FASB as being capable of assisting the SEC in improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities law, it provided no evidence to support its recognition that the FASB was being capable of assisting the SEC in improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities law. Therefore, we must ask not only whether the FASB is capable of assisting the Commission in improving the accuracy and effectiveness of financial reporting, but also whether its mission and purpose is to assist the Commission in improving the accuracy and effectiveness of financial reporting. To answer those questions, we must begin by reviewing the purpose of the FASB as set forth in the Articles of Incorporation of the FAF.

The purpose of the FAF, the creator of the FASB, as stated in its 1972 Articles of Incorporation is

\[\text{T}o \text{ advance and to contribute to the education of the public, investors, creditors, preparers, and suppliers of financial information, reporting entities, and certified public accountants in regard to standards of financial accounting and reporting; to establish and improve the standards of financial accounting and reporting by defining, issuing, and promoting such standards; to conduct and commission research, statistical compilations, and other studies and surveys; and to sponsor meetings, conferences, hearings, and}\]

\textsuperscript{102} 15 U.S.C. §77s(b).
seminars, in respect of financial accounting and reporting.103

Both the 2002 and 2012 FAF Articles of Incorporation reiterate its original purpose, but omit any reference to assisting the Commission in improving the accuracy and effectiveness of financial reporting.

The purpose of the FASB, set forth in the Articles of Incorporation of the FAF, is to

[T]o advance and to contribute to the education of the public, investors, creditors, preparers, and suppliers of financial information, reporting entities, and certified public accountants in regard to standards of financial accounting and reporting; to establish and improve the standards of financial accounting and reporting by defining, issuing, and promoting such standards; to conduct and commission research, statistical compilations, and other studies and surveys; and to sponsor meetings, conferences, hearings, and seminars, in respect of financial accounting and reporting.104

An examination of the FASB’s Statements of Accounting Concepts and Conceptual Framework confirms the purpose of the FAF and FASB.

First, the FASB’s Statements of Financial Accounting Concepts explains the purpose of the Statements of Financial Accounting Concepts. “Concepts Statements guide the Board in developing sound accounting principles and provide the Board and

103 Fin. Accounting Found. supra note 51.
104 Fin. Accounting Found., supra note 51.
its constituents with an understanding of the appropriate content and inherent limitations of financial reporting.”105 Concepts Statement No. 1 issued in 1978 is the first in a series of Statements of Financial Accounting Concepts the purpose of which

is to set forth fundamentals on which financial accounting and reporting standards will be based. More specifically, Statements of Financial Accounting Concepts are intended to establish the objectives and concepts that the Financial Accounting Standards Board will use in developing standards of financial accounting and reporting.106

Thus, all standards are or will be based on the Concepts Statements and serve the single objective of financial reporting that has been determined by the FASB: “to provide financial information about the reporting entity that is useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the entity.”107 The single objective of financial reporting as determined by the FASB is a function of the needs of those who make economic decisions about business enterprises.108 Therefore, the single objective of financial reporting determined by the FASB in Concepts Statement No. 1 is focused on and limited to information for investment and credit decisions.109 This is far afield from Congressional policy for creating the SEC: to prevent national emergencies.

109 Id. at ¶30.
Concept Statement No. 2 repeats the objective of financial reporting determined by the FASB in Concept Statement No. 1.

Concepts Statement No. 8, The FASB Conceptual Framework, again reiterates that the single objective of financial reporting is “to provide financial information about the reporting entity that is useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the entity.”

But Concepts Statement No. 8 is emphatic in rejecting any role in making financial reporting more effective, declaring “General purpose financial reports are not primarily directed to regulators, the public, or other parties…” The board concluded that expanding the objective of financial reporting beyond user decision making “would be inconsistent with its basic mission, which is to serve the information needs of participants in capital markets.”

The FASB’s basic mission, of course, is set forth in the Articles of Incorporation of the FAF

[T]o advance and to contribute to the education of the public, investors, creditors, preparers, and suppliers of financial information, reporting entities, and certified public accountants in regard to standards of financial accounting and reporting; to establish and improve the standards of financial accounting and reporting by defining, issuing, and promoting such standards; to conduct and commission research, statistical compilations, and other studies and surveys; and to sponsor meetings, conferences, hearings, and

112 FASB. Statement of Financial Accounting Concepts No. 8 at BC1.23 (emphasis added).
seminars, in respect of financial accounting and reporting.\textsuperscript{113}

The mission of the FASB is an extension of the mission of the FAF.

The collective mission of the FASB, the Governmental Accounting Standards Board (GASB) and the FAF is to establish and improve financial accounting and reporting standards to provide useful information to investors and other users of financial reports and educate stakeholders on how to most effectively understand and implement those standards.\textsuperscript{114}

Thus, it is not the mission of either the FAF or the FASB to assist the SEC in improving the effectiveness of financial reporting in order to prevent national emergencies.

Finally, the 2010 \textit{Statement of Financial Accounting Concepts No. 8} continues to narrow the purpose of financial reporting by \textit{…to be more direct by focusing on users making decisions about providing resources…}\textsuperscript{115} because “The Board’s…responsibilities require them to focus on the needs of participants in capital markets…”\textsuperscript{116}

Who charged the FASB with those responsibilities? It was not the SEC. The FASB’s responsibilities that require them to focus on the needs of participants in capital market are governed by the purpose declared in the FAF’s Articles of Incorporation.\textsuperscript{117}

\textsuperscript{113} Fin. Accounting Found., supra note 51.
\textsuperscript{114} About the FASB. \url{https://www.fasb.org/facts/index.shtml}. Last accessed December 31, 2018.
\textsuperscript{115} BC1.13 (emphasis added).
\textsuperscript{116} BC1.16 (emphasis added). Explain IASB
\textsuperscript{117} Fin. Accounting Found., supra note 51.
The central, common thread, indeed, the only thread, that runs through all versions of all FASB Concepts Statements beginning with SFAC 1 (which is considered an historical landmark that institutionalized information usefulness118) and all subsequent versions of the FASB Conceptual Framework from which all standards flow, is decision usefulness for capital providers based on cash flows. This theme cannot be ignored or explained away. Financial reporting

…should provide information to help present and potential investors and creditors and others to assess the amounts, timing, and uncertainty of the entity’s future cash inflows and outflows (the entity’s future cash flows). That information is essential in assessing an entity’s ability to generate net cash inflows and thus to provide returns to investors and creditors.”119

SFAC No. 1 continues with. “financial reporting is directed toward the common interest of various potential users in the ability of an enterprise to generate favorable cash flows…”120 SFAC No.

120 ¶30 supra. See Hugo Nurnberg, Changing perceptions of U.S. standard setters concerning the basic objectives of corporate financial reporting. 42 Accounting Historians Journal 1, 61-84 (2015). “[T]here is widespread agreement that the basic objective of financial reporting is to provide information that is useful for making economic decisions. What is not unanimous is to whom and for what purpose should financial reporting be decision useful.” at 61
1 further explains that, “The objectives focus financial reporting on a particular kind of economic decision—committing (or continuing to commit) cash or other resources to a business enterprise with expectation of future compensation or return, usually in cash.”¹²¹

The SEC may recognize a private standard setting body provided the standard setting body is capable of assisting the SEC of improving the accuracy and effectiveness of financial reporting under the securities laws. But none of the FASB Concepts Statements say anything about assisting the SEC of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws, and none of the Concepts Statements give any indication that the FASB is capable of assisting the SEC of improving the accuracy and effectiveness of financial reporting. Nor do any of the Articles of Incorporation of the FAF [recite as part of its purpose improving the accuracy and effectiveness of financial reporting.

In fact, the FASB does not claim that its Statements of Concepts/Conceptual Framework are intended to improve the accuracy or effectiveness of financial reporting. The FASB does not claim that its Standards of financial reporting are intended to improve either the accuracy or effectiveness of financial reporting. While the FASB Codification has offered a modicum of success against false and misleading information, the Codification does nothing to help protect against national emergencies, the primary reason for enacting the securities laws. Instead, the FASB deliberately focuses on decision making of market participants and their ability to predict positive future net cash flows to the exclusion of preventing national emergencies.

Accuracy and effectiveness are qualitative characteristics of financial reporting. The FASB describes qualitative characteristics in Chapter 3 of the 2010 Conceptual Framework.

The qualitative characteristics of useful financial information discussed in this chapter identify the types of information that are likely to be most useful to the existing and potential investors, lenders, and other creditors for making decisions about the reporting entity on the basis of information in its financial report (financial information).^{122}

The fundamental qualitative characteristics of financial reporting as determined by the FASB are relevance and faithful representation.^{123}

**THE FASB’S SABOTAGE OF CONGRESSIONAL POLICY AND SECURITIES LAWS.**

The FASB’s sabotage of federal securities laws and Congressional policy is revealed when we compare Congressional policy to the FASB’s purpose. Congress created the SEC and granted exclusive jurisdiction to the SEC to make, amend, and rescind rules and regulations defining accounting and to prescribe the form or forms in which required information shall be set forth including the items or details to be shown in the balance sheet and earning statement for the primary purpose of preventing national emergencies. Seventy years later Congress authorized the SEC to recognize private standard setting bodies provided the private standard setting body was able to assist the Commission in fulfilling the requirements of subsection (a) of the Securities Act of 1933 and section 13(b) of the Securities Exchange Act of 1934 and is capable of improving the accuracy and effectiveness of financial

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^{122} FASB. *Statement of Financial Accounting Concepts No. 2* at QC1.

^{123} FASB. *Statement of Financial Accounting Concepts No. 2*. Other qualitative characteristics include materiality, comparability, verifiability, timeliness, and understandability.
reporting and the protection of investors under the securities laws. The SEC in turn recognized the FASB as a private standard setting body. However, the FASB has consciously chosen not to assist the Commission in improving the accuracy and effectiveness of financial reporting under the securities laws, stating the Conceptual Framework that guides the Board in developing standards of accounting focuses on users making decisions about providing resources because the Board’s responsibilities require them to focus on the needs of participants in capital markets thereby sabotaging Congressional policy and the securities laws that created the SEC.

The FASB transformed the Congressional policy and the securities laws from preventing national emergencies to providing information to investors to enable them to predict positive net cash flows. The FASB has usurped the authority of the SEC by determining the objective of financial reporting and the SEC is complicit in the FASB’s transformation of Congressional policy because it has acquiesced in the FASB’s transformation of Congressional policy. Rather than exercise its authority to “define accounting” and “prescribe the form or forms in which required information shall be set forth,” the SEC has deferred to the FASB to define accounting and prescribe the form or forms in which required information shall be set forth, namely, “information to help present and potential investors and creditors and others to assess the amounts, timing, and uncertainty of the entity’s future cash inflows and outflows (the entity’s future cash flows). That information is essential in assessing an entity’s ability to generate net cash inflows and thus to provide returns to investors and creditors.”

If the FASB refuses to expand the objective of financial reporting because it is beyond its capability, then obviously the FASB is not capable of assisting the SEC of improving the

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accuracy and effectiveness, and therefore the SEC should not have recognized the FASB as a private standard setting body.

The primary purpose of the ’33 Act and ’34 Act is to protect the nation from national emergencies caused by the sudden and unreasonable fluctuations in the prices of securities which in turn cause unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce which puts the Federal Government to great expense, burdens the national credit, produces widespread unemployment, causes the dislocation of trade, transportation, and industry, burdens interstate commerce, and adversely affect the general welfare.125 None of the FASB’s standards is targeted toward preventing such national emergencies.

CONCLUSION

This article exposes the FASB’s sabotage of Congressional policy and the securities laws that created the SEC and granted the SEC exclusive authority to define accounting and prescribe the form or forms in which required information shall be set forth in order to prevent national emergencies, as well as the SEC’s complicity in the sabotage by recognizing the FASB as a private standard setter even though the FASB is not capable of assisting the SEC in improving the effectiveness of financial reporting.

While the FASB’s Standards and Codification has done much to protect market participants from fraud what has been accomplished in reducing fraud has been at the expense of implementing Congressional policy—to protect the nation from national emergencies. While full and fair disclosure reduces the occurrence of fraud and dampens the manipulation and control of securities prices as a result of fraud, it neither ends excessive speculation nor sudden and unreasonable fluctuations in the prices

of securities and thus does nothing to protect the nation from national emergencies.

The FASB has proven it is unable and unwilling to assist the SEC in protecting the nation from national emergencies as a result of the limitations placed on it by its stated purpose.

If the FASB’s *Concepts Statements* and *Conceptual Framework* that are intended to guide development of the standards\(^\text{126}\) are not intended to protect the nation from national emergencies, how can the standards derived from the *Concepts Statements* and *Conceptual Framework* be effective to protect the nation from national emergencies? These are public policy questions that must be addressed by Congress.