



**EXAMINING THE EFFICIENCY OF SECURITIES
OWNERSHIP IN THE UNITED STATES**

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ABSTRACT

The disastrous years following the Stock Market Crash of 1929 led to a series of reforms by President Roosevelt to stabilize the failing economy. The passing of the New Deal laws coupled with more recent laws passed by President Bush and President Obama have led to extensive regulation of the financial industry. Publicly-traded companies must register with the SEC and provide material information to the investing public. To do so, companies collectively spend billions of dollars on lawyers and accountants to adequately provide the information required by the SEC. This requires significant time and effort on behalf of the companies, which takes away from their ability to generate more revenue.

Although these regulations are crucially put in place to increase transparency and to prevent foul play, they have become too overreaching with their numerous registrations and accounting requirements. Companies produce annual and quarterly materials for the knowledge of their investors; however, these reports have become painfully long that it is difficult to read the reports of all the companies.

The current system governing the securities industry is complex, costly, and inefficient. This raises the question of how it could be improved. To answer this underlying question, one must first understand the historical needs to pass and establish the current securities laws and the issues that arose from their enactments.

Next, it is important to compare the system put in place by the United States government to those of other G8 countries in an attempt to find possible solutions that may work for the United States. Finally, one must identify the role technology will play in the future of securities ownership.

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INTRODUCTION

Financial Landscape before the New Deal:

In the early part of the 20th century, the sales of securities were governed by specialized state statutes often referred to as “Blue Sky Laws” (Macey and Miller, 1991). The term “Blue Sky” comes from the 1917 Supreme Court case: *Hall v. Geiger-Jones Co.*, which granted individual states the power to regulate the offer, sale, and purchase of securities. Justice Joseph McKenna famously stated in the case:

“The name that is given to the law indicates the evil at which it is aimed, that is, to use the language of a cited case, "speculative schemes which have no more basis than so many feet of 'blue sky'"; or, as stated by counsel in another case, "to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines and other like fraudulent exploitations." *Hall v. Geiger Jones Co.*, 242 U.S. 539 (1917)

These laws were viewed as a response by politicians to combat the serious fraud that prevailed in the securities markets in the years leading up to the 1929 stock market crash. Some states passed legislation that required securities sold in their dominion to be submitted to an administrative body for inspection of their merit and worth. Other states produced more passive responses, and they passed laws requiring only the disclosure of material information of the issuer and of the brokers without inspecting the merit or worth of the securities (Macey and Miller, 1991).

In the early 1900s, brokers would often sell securities to buyers under false pretenses of grandiose returns without providing material evidence to support their

assertions. Imperative details regarding the securities were deliberately hidden to attract more investors to the security. Such promises led investors to purchase more shares, which artificially overvalued publicly traded companies and inflated the market (Segal, 2019).

The Blue Sky Laws of the early 20th century were well-intentioned, but were ultimately flawed (Macey and Miller, 1991). The government did not require or enforce the disclosure of material company information to investors on a federal basis, and it allowed for states to pass their own legislation on the matter, which often did not coincide with other states' regulatory laws. This lack of disclosure in addition to the inconsistency of the regulatory laws of the states ultimately led to the four-day collapse of the stock market in late October, 1929 ⁴. The Wall Street Crash of 1929 propelled one of the longest and most devastating depressions in the history of the industrialized western world, which led to the loss of billions of dollars (Pells and Romer, 2019). During the depression, industrial production in the United States fell 47%, real GDP fell 30%, and, at its peak, unemployment surpassed 20 percent (Pells and Romer, 2019).

Following the tragic events of the Great Depression, President Franklin D. Roosevelt signed into law the Securities Act of 1933 as part of his New Deal initiative to bring about economic relief, recovery, and reform. The Securities Act of 1933 is known as the “truth in securities” law because its primary objectives are to provide investors with material information and prohibit any form of deceit or fraud (“The Laws that Govern the Securities Industry,” 2013). In the following year, President Roosevelt signed the Securities Exchange Act of 1934 (SEA) as a continuation of the

New Deal. The SEA allowed for the creation of the Securities Exchange Commission (SEC), and gave the agency the authority to govern and monitor securities transactions in an attempt to establish financial transparency across the transactions. The laws and government agencies that arose out of President Roosevelt's New Deal set the foundation of the security laws used today.

US SECURITIES LAWS

The Securities Act of 1933:

Congress passed The Securities Act of 1933 as a response to the financial ruin caused by Great Depression. As a part of Roosevelt's New Deal, the law seeks to amend and reverse the economy, and it aims to prevent another Great Depression in the future. In signing this law, President Roosevelt created the first piece of major legislation concerning the sale of securities (Kenton, 2019). The main objectives of The Securities Act of 1933 are to provide the public with material information regarding securities being offered for public sale through increased transparency in financial statements and to create laws that prohibit deceitful practices and misrepresentations of the financial health of publically traded companies. In order to achieve these goals, the law requires companies to disclose important financial information to investors through the registration of their securities with the SEC.

The Securities Act is meant to protect the interests of the investing public. The SEC requires transparency from the registered companies to provide investors with current and accurate information; however, it remains the responsibility of the investor to make cautious decisions when investing because although the SEC requires financial statements to be accurate, it does not guarantee it ("The Laws that Govern the Securities Industry," 2013).

Registration Process

Companies planning on raising capital from public investors through the sale of securities must register with the SEC through a registration statement. The

company must include a prospectus in the registration statement, and then the SEC relays the information to the public. The prospectus is a legal document that contains important details of the business such as the company's history, management profiles, financial statements, and other material information. When a company first sells stocks to the public in an SEC-registered offering, it is referred to as an initial public offering (IPO) (Stowell, 2013).

There are exemptions for the SEC's registration requirements with Rule 144 of the Securities Act being the most commonly cited. Rule 144 regulates the resale of restricted securities among qualified institutional investors (Stowell, 2013). The SEC defines restricted securities as "securities acquired in unregistered, private sales from the issuing company or from an affiliate of the issuer" ("Rule 144: Selling Restricted and Control Securities," 2013). These securities include most bonds and convertible transactions, which are exercised without registering with the SEC (Stowell, 2013). There are five conditions that must be met to qualify for a Rule 144 exemption:

1. Holding Period
2. Current Public Information
3. Trading Volume Formula
4. Ordinary Brokerage Transactions
5. Filing a Notice of Proposed Sale With the SEC

(1) For companies registered with the SEC, they are required to hold their securities for at least six months before selling their restricted securities in the marketplace. For firms not registered with the SEC, they are required to hold their restricted securities for at least a year. In both cases, the relevant holding period begins on the date when

the securities are bought and fully paid for. This holding period only applies to restricted securities.

(2) There must be adequate and current public information concerning the financial health of the company in order for investors to be fully aware of the potential risks they are taking. This information is often presented through historical financial statements, business descriptions, and management biographies.

(3) If the selling party is an affiliate of the company, the number of securities the affiliate may sell during any three-month period cannot surpass 1% of the total outstanding shares in its share class.

(4) As an affiliate, sales must meet normal trading conditions and be considered normal transactions, and brokers cannot be overcompensated for the sales. Neither the broker nor the seller can solicit orders to buy securities.

(5) The SEC requires an affiliate to file a notice in the event where a sale is valued over \$50,000 or involves over 5,000 shares over a three-month period.

The Securities Exchange Act of 1934:

The passing of the Securities Exchange Act of 1934 granted Congress the ability to create the SEC, and it gave the commission the authority to oversee securities, markets, and financial professionals. This includes the power to “register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation’s self-regulatory organizations” (“The Laws that Govern the Securities Industry,” 2013). The purpose of this regulatory agency is to ensure financial transparency in securities transactions in secondary markets to reduce potential

fraud. The SEC enforces the laws that govern the securities industry such as the Securities Act of 1933, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisors Act of 1940, the Sarbanes-Oxley Act of 2002, and the Dodd-Frank Act of 2010.

The Securities Exchange Act requires corporate reporting. Companies controlling more than \$10 million in assets whose securities are held by 500 or more investors and/or institutions must file annual and other periodic reports to the SEC. This allows for increased transparency among large publicly traded firms.

The Act also dictates proxy solicitations, in which it compels companies to disclose material information to shareholders for annual votes or for voting in the elections of board directors. The information present in proxy materials must be filed with the SEC prior to any solicitation to guarantee conformity with the SEC's disclosure rules ("The Laws that Govern the Securities Industry," 2013). The solicitations must acknowledge all important matters and decisive facts to give shareholders a better sense of the issues they are voting on.

In addition, the Act has strict guidelines for tender offers to further ensure the safety of investors. A tender offer occurs when an investor or institution offers to purchase shareholders' shares in a company at a premium. The SEC requires the buyer of these shares to disclose their position once the buyer accumulates 5% or more of the company's shares ("The Laws that Govern the Securities Industry," 2013). Again, this information is crucial to keeping investors informed about the events that occur in the companies they are investing in to ultimately protect their financial

interests. In this case, the disclosure of an investor's position once they acquire 5% or more shares will alert other investors of a possible takeover.

This law forbids individuals from engaging in insider trading. Insider trading occurs when an investor uses material non-public information to purchase or sell securities, thus giving the investor an upper-hand on the public. Insider trading is illegal and a direct violation of the Securities Exchange Act. The SEC has prosecuted officers, directors, employees, lawyers, and accountants on the grounds of insider trading ("The Laws that Govern the Securities Industry," 2013). The maximum prison sentence for violating this law is 20 years, and the maximum fine is \$5 million.

The SEC acts to enforce the laws proposed in the Securities Act of 1933 to protect the interests of investors and reduce fraudulent activities in the financial industry. These laws seek to create a level playing field for all investors because the government believes that transparency is necessary to prevent another financial collapse following the Great Depression.

Section 16: Beneficial Ownership

Section 16 of the Securities Exchange Act lays out the regulatory filing requirements for officers, directors, and principal stock holders, who own more than 10% of the company. These three classes of people are referred to as insiders (Feldman and Teberg, 1966). The SEC requires registration of ownership within 10 days of becoming a beneficial owner, officer, or director under an initial statement in Form 3. The purpose of this filing is to disclose "the amount of all equity securities of such issuer of which he is the beneficial owner" (Feldman and Teberg, 1966, p.1057). From then on, in the event of changing ownership, the SEC requires the changes to be

filed within the first 10 days of a calendar month in which a transfer of ownership has occurred. This sets a precedent that the beneficial ownership of insiders must be frequently updated and disclosed (Feldman and Teberg, 1966).

A beneficial owner is defined as “one who benefits from a security or property because the use and title belongs to him/her, although the legal title may belong to another person” (US Legal, Inc., n.d.). The legislative history of the term indicates that it was meant to “exclude a person having bare legal title only” (Feldman and Teberg, 1966, p.1058). The word “beneficial,” in this case, refers to the benefits that come with equitable ownership, so a “beneficial owner” is not only an equitable owner, but one who enjoys the benefits associated with security ownership.

Beneficial refers to the advantageous gain received from owning securities.

There are two categories of benefit that arise with the ownership of securities:

- (1) Intrinsic benefits such as voting rights, dividends, and interest payments, and
- (2) Extrinsic benefits that are associated with the buying and selling of securities.

These benefits can be magnified by acquiring a large number of shares in a company, which in turn can grant the owner of the shares more control. The volume of buying and selling many shares can give the owner the ability to drive the market price of a security up or down. By manipulating the market in such a way, the owner may create and take advantage of a potentially profitable opportunity (Feldman and Teberg, 1060). In addition, owning a considerable number of shares grants the insider control of the company through voting rights. This control gives the insider the ability to affect the timing and proceedings of corporate events, which ultimately affects the market price of the security, as well as the news release of these events.

Individuals within a company with this level of influence can obtain market advantages for themselves that are not accessible to the remainder of the investing public through their knowledge of material non-public information and their ability to regulate the timing of corporate announcements. Congress concluded that this level of control led to malicious practices in the years prior to the Great Depression that conflicted with its desire to maintain a fair marketplace for securities. Evidence collected prior to the enactment of the Exchange Act adjudged that said malicious practices directly contributed to the uncontrolled speculation, which played a role in the credit inflation causing the Crash of 1929 leading to the Great Depression (Feldman and Teberg, 1966). Congress viewed Section 16 as a crucial piece of their plan to control speculation and market manipulation by establishing the paradigm that company managers and insiders have fiduciary responsibilities to their stakeholders. The House Report described the deterrents put in place as "the most potent weapon[s] against the abuse of inside information" (Feldman and Teberg, 1966, p.1062). Congress believed that the continuous reporting requirements set by Section 16, in concordance with the other statutes of the Exchange Act, would essentially eradicate insider misconduct.

The Trust Indenture Act of 1939:

The Trust Indenture Act of 1939 (TIA) acts as an amendment to the Securities Act of 1933, and it governs the offerings of debt securities, such as bonds, to the public (US Legal, Inc., n.d.). The act is intended to protect the rights of bondholders by requiring the bond issuer to retain the services of a trustee, whose duty is to uphold these rights. The act calls for a qualified trustee to best serve the interests of the bondholders. Debt securities may be registered under the Securities Act of 1933, but may not be offered for public sale without a formal contract between the bond issuer and the bond holder. This contract is referred to as the trust indenture, which states the individual items and terms of the bond issuance, and requires the presence of a trustee. In the period before the Great Depression, indentures were not required to contain material information regarding the performance of a company, and, therefore, investors could not properly assess the risk of a company defaulting on its debt obligations.

Before the law passed, trustees were passive in their roles, but with the passing of the law, they were given more responsibilities and liabilities. This passiveness prevented collective bondholder action, in which bondholders trying to force action did not have access to the information of other bondholders, who would, in theory, act with them. The enactment of TIA required trustees to provide a list of their bondholders to improve the communication (Kenton, 2019). In addition, TIA stripped trustees of their immunity clauses making them liable for their negligence. Section 315d of TIA states that an indenture cannot include any provision "relieving the indenture trustee from liability for its own negligent action, its own negligent

failure to act, or its own willful misconduct” (Katz, 1940, p. 290). Former Dean of the University of Chicago Law School, Wilber G. Katz, believed that “standing alone, this probably would effect a very radical change in the responsibility of the trustee” (Katz, 1940, p. 290). In summary, TIA furthered Congress’ vision of creating a fair securities market by imposing stricter regulations on bond issuers and increasing the liability for trustees.

The Investment Company Act of 1940:

The Investment Company Act of 1940 furthered President Roosevelt's vision of creating a stable regulatory framework following the Crash of 1929. This act defines an investment company (i.e. mutual fund), and it separates the responsibilities of investment companies from those of investment banks to cut any potential conflicts of interest that may occur. It also requires investment companies to register with the SEC in order to sell their securities to the public. After registration, investment companies must adhere to certain limitations including leverage, short-selling, and performance fees (Stowell, 2013).

Investment Advisors Act of 1940:

The Investment Advisors Act of 1940 became law simultaneously with the Investment Company Act of 1940, following a survey carried out by the SEC, which concluded that "the activities of investment advisors and advisory services patently present various problems which usually accompany the handling of large liquid funds of the public" (Lovitch, 1975, p. 67). The goal of this act is to protect the investing public from any malpractices by individuals who are paid to provide advising services regarding securities. To do so, the government required investment advisors to register with the SEC, and the act made it unlawful for such advisors to engage in any level of fraud or deceit.

The statutes of the act apply to any persons who fall under the definition of an "investment advisor." This includes anyone who receives compensation for advice regarding the value of securities or about the buying and selling of securities.

Sarbanes-Oxley Act of 2002:

The Sarbanes-Oxley Act of 2002 responded to numerous corporate scandals and bankruptcies that occurred earlier in the decade by companies such as Enron, WorldCom, Xerox, HealthSouth, Sunbeam, Waste Management, Global Crossing, Tyco, and others. This legislation was enacted to repair the broken auditing system, which became prevalent in many of these large companies. Investors lost trust and confidence when these massive corporations exaggerated their financial statements. Sarbanes-Oxley is meant to protect shareholders from fraudulent misrepresentations found in financial statements. The Sarbanes-Oxley Act led to higher accountability for those intentionally falsifying financial statements, and included a prison sentence for those caught.

The passing of the law allowed for the creation of the Public Company Accounting Oversight Board (PCAOB), a quasi-public institution with the power to oversee auditors. The primary goal of the PCAOB is “to enlist auditors to enforce existing laws against theft and fraud by corporate officers” (Coates, 2007, p. 91).

Section 302 of the Sarbanes-Oxley Act requires a company’s management to sign off on its financial statements before they are released to the public to ensure that the reviewed financial statements present a truthful and accurate view of the firm’s financial health. Management officers who sign off on inaccurate representations of their financial statements may face various criminal penalties, including prison time.

Section 401 of the act compels companies to disclose any relevant material information that may exist, but is not recorded on the financial statements. This is to

provide transparency to the investing public regarding the overall condition of the companies in which they invest.

The Dodd-Frank Act of 2010:

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law by President Obama as a response to the catastrophic effects of the 2008 financial crisis. The Dodd-Frank Act is “the most far-reaching regulatory change to the financial services industry since 1934. **21**” This act, like the laws passed by the New Deal, intended to pull the United States out of another financial crash by addressing the systemic flaws leading to the crash, and offering regulatory responses to counter their effects.

Prior to the 2008 financial crash, several government agencies were put in place to regulate financial institutions; however, this often led to regulatory gaps between the agencies. To fill these gaps, the act created the Financial Stability Oversight Council. The Council is responsible for providing an early warning system for finding and preventing rising systemic risks (Stowell, 2013).

The reform increased the responsibilities of banks and other financial institutions engaging in securitization and the sale of securitized products by requiring them to retain at least 5% of each debt tranche they create (Stowell, 2013). In addition, the government required stricter regulations on over the counter (OTC) derivatives, which were not regulated before the crash. This granted the SEC and the Commodities and Futures Trading Commission the authority to regulate OTC derivatives.

The Dodd-Frank Act ended the “too big to fail” policy to prevent government bailouts in the future. It also included the Volcker Rule, which prohibited banks from engaging in proprietary trading. The Volcker rule also reduces bank investments in private equity funds and hedge funds to 3% of any fund, and overall investments in these funds was reduced to 3% of Tier 1 Capital (Stowell, 2013).

Impact of these Laws Today:

The securities laws passed by the US government in the 20th and 21st centuries act to reverse and prevent market crashes. The purpose of the New Deal was to alleviate the damages caused by the Great Depression and to prevent another crisis from happening in the future. The same can be said of the Sarbanes-Oxley Act passed by President Bush and the Dodd-Frank Act passed by President Obama. The passing of these laws and government initiatives have reduced the damages caused by the market crashes, but, in passing more laws, lawmakers have increased regulations on companies. This increased regulation puts an economic burden on the companies to comply with the laws. Companies must hire expensive lawyers and accountants to compile reports regarding their company’s financial health on a quarterly basis.

Not only are these regulations expensive to comply with, but the laws themselves are outdated. Over the past century, technological advancements in finance have changed the landscape of the sector making it easier to trade securities almost instantaneously and in large volumes. New types of securities introduced into the marketplace, such as the credit-default swaps (CDOs) that played a part in the 2008 financial crisis, often have low, if not no, regulation by the government.

From this, one can conclude that the rate at which laws are created is significantly slower than the rate of the sector's growth. Laws must move faster to keep up with the ever-changing financial landscape to preserve the health of the economy. Lawmakers must be capable, and they must be up to date on the technological advancements and the impacts of new securities. The securities laws need to be revised regularly to solve this inefficiency.

OWNERSHIP IN G8 COUNTRIES

Securities Ownership in the US:

A stock is a type of equity security that represents an investor's part-ownership in a corporation. Historically, equity ownership in the United States was as simple as owning a colorful and engraved piece of paper called a stock certificate (Aronstein, 1978). The certificates included important information regarding the number of shares owned, the date of ownership, an identification number, and other rights that a shareholder might have, such as voting. The invention of the stock certificate revolutionized trading in a way that made the transferring process easy for investors. Shareholders could transfer their rights easily and directly by handing the piece of paper to their desired transferee (Aronstein, 1978). The stock certificate gave buyers confidence in the legitimacy of their purchase, and the exchange between the buyer of the stock certificate and the seller became a simple transfer of paper. This basic system of exchange made it easier for creditors to access the shares owned by their debtors simply through seizing the debtors' certificates, and the physical location of the certificates determined the jurisdiction in certain legal proceedings (Aronstein, 1978).

Before computers and the internet, transferring ownership required face-to-face interactions or the use of mail to complete the exchanges. However, by the mid-1960s, the New York Stock Exchange incorporated a fully automated computerized system, which allowed investors to begin trading nationwide, and later globally. This caused the market environment to dramatically change, and many believed that there

was no longer a need for stock certificates. The introduction of technology and the rapid integration of global markets transformed the simple system of exchanging stock certificates into a complex web of brokers, correspondents, exchanges, and other intermediaries (Aronstein, 1978). Technology and globalization come with many obvious benefits such as the ability to trade overseas, trading at higher volumes, faster trades, more accurate records, and instantaneous communication with corporate issuers; however, the introduction of this new system made the transfer of ownership much more expensive and time-consuming compared to the previous system of basically exchanging pieces of paper (Aronstein, 1978).

Modern US Ownership

In the event of a merger or an acquisition, the management of the target company attempt to strike a deal with the acquirer, and then the target calls a meeting so shareholders can vote on the merits of the deal. Typically, it is inconvenient for shareholders to travel to attend these meetings, so many them are absent. In response to this, companies mail proxy cards to the missing voters, which they can fill out and mail back to the company with directions regarding how the shareholder wishes to vote. The proxy card appoints an individual, who will be at the meeting, to vote on behalf on the absent shareholder (Levine, 2016).

This may seem simple enough, but in many cases, individual shareholders are not the actual owners of the stock. In other words, the shareholders are not “shareholders of record,” whose shares appear on the company’s stock registry (Levine, 2016). Rather, the shareholders hold their shares in “street name,” which means that their broker owns the shares on their behalf. This makes the broker the

legal owner of the shares and the investor the beneficial owner. There are several advantages that come with street name registration such as the ability to place limit orders to sell a security at a specified price and being able to set up margin accounts. The broker also becomes responsible for safeguarding the shareholders' stock certificates, so the investor does not need to worry about them getting lost or stolen ("Holding Your Securities- Get the Facts," 2003). The disadvantages that arise include delays in dividend payments because it must first go through the broker. Another disadvantage is that since the shareholder is not registered with the company, he or she will not receive important corporate information directly, but through the broker ("Holding Your Securities- Get the Facts," 2003).

Since the broker is the legal owner of the shares, it receives the voting rights associated with ownership. The broker will still ask the shareholder how to vote, and then it will send representatives go to the meeting and vote on the investors' behalf. If a shareholder with a street name registry desires to attend the meeting and vote for themselves, they must ask the broker for a proxy to attend the meeting.

However, the system of ownership is still more complex. Brokers typically do not even own the shares they hold for investors in street name, but, instead, the brokerages agreed to place all their shares in a single place called the Depository Trust Co. (DTC), which owns the brokerages' shares. This facilitates transfers of shares because brokers no longer need to go from brokerage to brokerage exchanging physical stock certificates; instead, they can accomplish everything on the DTC's central computer (Levine, 2016). This level of convenience increases the complexities associated with voting. The DTC becomes the record owner under state laws, whereas

brokers are the record owners under federal law. This results in the DTC needing to give proxies to brokers so that they can vote on behalf of their investors.

The institutions that manage these shares must keep track of thousands of stocks, and it is difficult, if not impossible, to keep track of meetings for each company that is invested in. These institutions hire outside firms to aid them in organizing company meetings, voting, and submitting proxies. This current method of owning stocks is extremely confusing and profound. The system is governed by laws written nearly 100 years ago, which do not all translate into the modern day.

Securities Laws in Japan:

Following Japan's defeat in World War II, the United States government began rebuilding Japan, which included the restructuring of their financial system. In 1948, the Japanese Diet enacted the Securities and Exchange Law, which used the codes from the Securities Act of 1933, the Securities Exchange Act of 1934, and the Glass-Steagall Act of 1933 almost verbatim. However, since the birth of Japan's modern regulatory system, the system has transformed into a somewhat different scheme.

In 1947, the Japanese government established the Ministry of Finance (MOF) to oversee the regulation of Japan's financial system. Up until 1971, foreign securities firms could not operate in Japan. This changed with the passing of the Law Concerning Foreign Securities Firms, which allowed foreign firms to enter provide investment banking services in Japan (Stowell, 2013). In 1992, Japan passed the Financial Institution Reform Act, which reversed the separation of investment banking and commercial banking. The act also created the Securities Exchange and Surveillance Commission (SESC), which shared some of the regulatory responsibilities of the MOF.

Starting in 1998, Japan began to deregulate its financial industry, which is referred to as the "Big Bang." The Big Bang separated the SESC and the MOF, and established the Financial Supervisory Agency, which became Japan's main regulatory body. The Financial System Reform Law in 1999 granted commercial banks the ability to own brokerage firms that underwrite equity and debt securities (Stowell, 2013). Japan passed the Financial Instruments and Exchange Law in 2006 that acted like the Sarbanes-Oxley Act in the United States. The law called for increased regulation on broker-dealers, added disclosure requirements for registered public companies and

large shareholders, and tender offer rules **26**. During the 2008 Crash, Japanese banks had much lower exposure to subprime mortgage securities than the US and the UK. While American and British lawmakers took large measures to regulate their financial markets, Japan stayed passive because its lawmakers believed that increasing regulation would make Japanese banks less competitive in the international arena (Stowell, 2013).

Modern Japanese Ownership

In recent years, the Bank of Japan (BOJ) has accumulated ownership in 40% of the companies listed on the Tokyo Stock Exchange. The BOJ is a top 10 shareholder in each one of those companies. The BOJ buying shares of Japanese companies is a part of its monetary easing initiative to “lift the country out of deflation, and hit a 2% price stability target” (Shirai, 2018).

Securities Laws in the UK:

Prior to 1986, firms in Britain's financial system regulated themselves. In 1986, Britain experienced its own Big Bang that reformed the self-regulated into a statutory framework. The Financial Services Act 1986 created Britain's regulatory arm called the Securities and Investment Board (SIB) (Stowell, 2013). Firms must register with the SIB because conducting any investment business without authorization from the British regulator is a criminal offense (Stowell, 2013).

Britain's financial system once again changed in 1997, when the government renamed the SIB to the Financial Services Authority (FSA). The newly formed regulatory arm consolidated the power of nine other regulatory agencies into one massive agency. This gave the FSA more power and control over regulating banks. Like the SEC in the United States, the FSA has the authority to pass its own rules without the need to go through Parliament. In 2001, Parliament enacted a law called the Financial Services and Markets Act 2000 to replace the Financial Services Act 1986.

Following the 2008 Crash, the British government sought to once again reform their financial system because of the regulatory failure that occurred during the global stock market crash. Parliament signed into law the Financial Services Act in 2013, which ultimately dissolved the FSA. The responsibilities of the FSA were divided between the newly created Financial Conduct Authority, responsible for policing financial activity, and the Prudential Regulation Authority of the Bank of England, responsible for regulating financial firms.

Securities Laws in China:

In the mid-1800s, the Treaty of Nanking ended the first of two Opium Wars between China and Britain. One of the terms of the treaty gave Britain control over the Hong Kong island for a period of 99 years. Because of this, Hong Kong's financial system was under British control instead of Chinese control, which caused a rift between the two systems.

Before 1992, the Chinese economy was essentially closed off to investment banking and other foreign investments. However, under Deng Xiaoping's administration, China began opening doors to attract foreign trade and investments. In 1992, the Chinese government established the State Council Securities Commission (SCSC) and the China Securities Regulatory Commission (CSRC) to regulate their new and growing financial sector. The SCSC focuses primarily on regulating the centralized market, whereas the CSRC acts as the enforcement arm for the SCSC, and it also regulates China's securities market (Stowell, 2013).

In 1998, the Chinese government enacted the Securities Law of the People's Republic of China, which merged the SCSC and the CSRC into one government entity under the State Council. This law also separated banks engaging in deposit-taking from those engaging in securities activities.

In 2005, the Chinese government revised the Securities Law of the People's Republic of China and the Company Law of the People's Republic of China to keep up with the rest of the world. The revisions amended 40% of the existing articles, which included 53 additions and 27 deletions (Stowell, 2013). The reformed law lowered restrictions on banks that engage in securities activities, created a Chinese derivatives

market, increased security and protection for Chinese investors, and gave the Chinese regulators the power to audit and investigate firms under their jurisdiction, with the ability to control a securities firm's assets (Stowell, 2013).

Modern Chinese Ownership

China's communist regime limits the foreign direct investment within its borders. The Chinese government looks to exercise a certain amount of control over its domestic companies, and, therefore, restricts the amount of foreign investment. The restrictions ensure that foreign entities do not accumulate ownership and control over Chinese companies and resources. Over time, these ownership restrictions have been relaxed in some sectors, but key sectors, such as oil and gas, are still under the full control of the Chinese government.

Companies in China can issue three primary classes of shares. "A" shares can only be owned by Chinese citizens, and they are traded on the Shanghai and Shenzhen stock exchanges. These shares apply to Chinese companies, and must be purchased using China's local currency, the renminbi. This share class is off-limits for non-Chinese investors, but, in 2002, China began allowing Qualified Foreign Institutional Investors (QFII) to purchase a limited amount of "A" shares of any listed Chinese company. By 2006, 40 financial institutions qualified for QFII status, including Goldman Sachs, HSBC, and Deutsche Bank.

China's "B" shares are also traded on the Shanghai and Shenzhen exchanges, but they can be purchased using US dollars and be owned by foreigners. The Chinese government intended to use this share class to help domestic companies raise capital from overseas. In 2001, the CSRC began permitting Chinese citizens to buy "B" shares.

The third primary class of shares in China are “H” shares. “H” shares of mainland Chinese companies that are traded on the Hong Kong stock exchange. This class of shares can only be bought using Hong Kong dollars. Foreigners are permitted to buy “H” shares, and, as a result, the shares are more liquid than “A” shares. Because of this, “A” shares trade at a premium compared to “H” shares of the same company. Hong Kong, for many years, existed as an English colony, and was subject to Britain’s common law basis. Hong Kong operated independently from mainland China during this period; however, since 1999, China has begun to exert its influence and control on Hong Kong.

Comparing G8 Ownership Systems:

Due to the increased globalization that occurred in the last 100 years, the basis of the laws of the countries examined are similar. However, since the 1930s, countries have reacted to certain economic and political events differently. The way governments respond to such events is determined by their financial policies and culture.

Following the 2008 financial crisis, the United States and the United Kingdom believed that increasing regulations in their financial markets would help stabilize their falling economies. Japan took a different approach altogether, and it did not seek economic reform in order to keep its banks competitive in the international arena.

Culture plays a significant role in the ownership systems of these countries. The Chinese government and its people put the wellbeing of the state above all else. China prohibits foreigners from investing in its domestic companies to maintain control under its Communist regime. To uphold this policy, China implemented several classes of shares that base ownership on citizenship. Only approved foreign institutional investors can purchase shares originally meant for Chinese nationals, but all other foreign investors can purchase shares through the Hong Kong exchange. This system of ownership could not be applied to the United States because many of its citizens would be against the idea of “big government.” This belief goes hand in hand with the culture present in the US. Japan’s central bank, the BOJ, accumulating significant ownership in 40% of its publically traded companies would also fail in the US for similar reasons. The American public would not want its government and central bank to gain that much power.

Though not all of these systems would be able to work well in the US, American lawmakers can still learn from these other countries. Japan, the UK, and China all regularly update and reform their laws relative to the current financial landscape. In the last 30 years, the United States only passed two new securities laws, which is not nearly enough to reduce the inefficiencies found in the system. China amended nearly half of its existing articles in 2005, and both the UK and Japan underwent a “Big Bang” to reform their financial systems. It is time for the United States to experience its own “Big Bang” in order to stay competitive in the future.

BLOCKCHAIN AS A SOLUTION

Every day, trillions of dollars are exchanged between billions of people in the global financial system through orders, trades, payments, etc. (Tapscott & Tapscott, 2017). The participants of these transactions record the exchange in their own ledgers, which is one version of the truth that may differ between the participants. Because each ledger could possess different information, transaction participants must depend on a trusted third party, such as a bank, to maintain the integrity of the transaction. This can make a simple, ordinary transaction complex. For example, if Person A in the US wishes to send money to Person B in Brazil, he or she must first tell the trusted third party to transfer the desired sum of money to Person B. The trusted third party, because it is centralized, can then identify Person B in Brazil through their bank account, and then it can deposit the money to Person B. Several problems arise through this method of exchange. First, the use of a third-party intermediary results in many fees that are required to complete the transaction. Second, the use of intermediaries causes a three-day delay in the transaction, so Person B does not receive the transfer immediately. Third, the use of an intermediary limits the interaction between the participants of the transaction.

This current method presents several inefficiencies, and it is therefore costly. The use of multiple ledgers has the potential to lead to errors, fraud, and more inefficiencies. This financial system often creates redundant and tedious paperwork that is evaluated over and over again by expensive lawyers and accountants.

Santander Bank estimates that the inefficiencies of the system ultimately cost consumers up to \$20 billion a year in banking and insurance fees.

In recent years, a possible solution has emerged to solve the inefficiencies of our current global financial system: Blockchain (Tapscott & Tapscott, 2017). Blockchain is a globally distributed digital ledger that records transactions publically and chronologically (“Blockchain: Explained in Plain English,” 2018). Each transaction is a piece of data that is recorded in a “block.” Blocks can contain data for asset transfers, money, medical records, voting rights, etc. Once the block is updated with the desired data, it is added to the chain of already existing blocks, hence the name “Blockchain.” Data in the Blockchain cannot be edited or removed from the chain once it is uploaded. Since the ledger is widely distributed across millions of computers around the world, the trust and integrity of the system lies in network consensus and the cryptography (Tapscott & Tapscott, 2017).

The implementation of Blockchain would allow for businesses and individuals from across the world to interact with one another in ways never seen in the history of finance. Two or more parties would be able to “forge agreements, make transactions, and build value without relying on intermediaries to verify their identities, establish trust, or perform the critical business logic” (Tapscott & Tapscott, 2017).

Large financial institutions such as JP Morgan Chase, Credit Suisse, and Citigroup have collectively spent millions investing in Blockchain technology because they believe they will be able to do more with less. Best-selling author, Don Tapscott, believes that “by reducing transaction costs among all participants in the economy, Blockchain supports models of peer-to-peer mass collaboration could make many of

our existing organizational forms redundant” (Tapscott & Tapscott, 2017). This would ultimately help strengthen and transform our outdated system and save money for the consumers.

CONCLUSION

The United States maintains many of the laws it enacted during the time of the New Deal. These laws are outdated, and they have made the system of owning securities increasingly complex as new regulations arise. The accrual of regulations over time has made reporting standards time consuming and expensive for companies around the world. Companies are mandated by the government to file extensive reports with the SEC, which require hiring pricey lawyers and accountants. The current system of ownership adds several intermediaries to a simple transaction, and that burden ultimately falls onto the investing public through billions of dollars' worth of fees to the intermediaries.

By examining the securities laws of the United States, one can understand the fundamental parts of the ownership system. The history behind the laws and the problems they attempt to solve are crucial in identifying our current problem. The financial marketplace leading up to the Great Depression became unfair and fraudulent. Brokers failed to disclose material information to their clients, and, as a result, investors were led to purchase more shares of companies. This systemic over-investing by the public caused publically traded companies to be artificially overvalued and inflated the market. These events coupled with other factors ultimately provoked the Crash of 1929. In response to the failing economy, President Roosevelt enacted the New Deal to mitigate the damages caused by the depression. Roosevelt passed a series of securities laws to increase transparency for investors, so they could make informed investing decisions based on accurate information.

In theory, providing investors with important information is beneficial, but there is too much information available for one investor to digest. Gathering and presenting this information is costly, and it often leads to redundant paperwork. These costs eventually end up being a burden on consumers.

The current system boasts billions of dollars' worth of inefficiencies each year, and a change is necessary for the US to remain a financial power in the world today. As Blockchain technology matures, financial institutions can utilize its services to reduce intermediaries, costs, and time of transactions. Blockchain could potentially be the next financial revolution, and if it is to succeed, lawmakers must take initiative early on, and they must regulate the new technology accordingly and regularly. The existing laws may not apply to the new technology, so it is crucial to update, or even change, them to accommodate its possible implications.

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