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HENRY MANNE AND NONPUBLIC COMPANY DISCLOSURE

Houman B. Shadab

This essay discusses Henry Manne's 1974 article, *Economic Aspects of Required Disclosure Under Federal Securities Law*,¹ and its application to nonpublic disclosure regimes such as that applicable to hedge funds and startups crowdfunding capital under the Jumpstart Our Business Startups Act of 2012.

I. MANNE AND THE ECONOMICS OF DISCLOSURE REGULATION

In the *Economic Aspects of Required Disclosure Under Federal Securities Law*, Manne makes numerous broad critiques against mandatory securities disclosure in general and some specifics required by the Securities Act of 1933 ("Securities Act") and the Securities and Exchange Act of 1934 ("Exchange Act"). This section briefly summarizes key aspects of Manne's article.

Manne begins by noting that disclosure law has its roots in the narrowly tailored and low-cost common law fiduciary duties and 19th century incorporation acts that required disclosure of material facts.² In Manne's view, this "era of relative laissez-faire in the market for information about stocks"³ came to an end with the wide-ranging and detailed requirements found in the Securities Act and the Exchange Act. He observed that, at the time, economists had significant doubt about whether the statutes resulted in optimal disclosures. Indeed, Manne notes that based on the best available evidence, there is no reason to believe that fraud was a significant problem prior to passage of the Securities Acts.⁴ Importantly, Manne notes, the fact that most companies listed on the New York Stock Exchange were voluntarily disclosing the most important type of information that was subsequently mandated indicates that competitive pressures from investors

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¹ Henry G. Manne, *Economic Aspects of Required Disclosure Under Federal Securities Law*, in *WALL ST. IN TRANSITION: THE EMERGING SYSTEM AND ITS IMPACT ON THE ECONOMY* 23 (Henry G. Manne & Ezra Solomon eds. 1974).

² *Id.* at 23.

³ *Id.* at 25.

⁴ *Id.* at 27. The lack of rampant securities fraud or market manipulation prior to the Great Depression has also been confirmed by recent research. See PAUL MAHONEY, *WASTING A CRISIS: WHY SECURITIES REGULATION FAILS* (2015).

required them to do so.⁵ Market forces were clearly at work in the market for information.

Manne criticizes the view that mandatory disclosure is non-regulatory, or non-substantive, due to it forcing companies to undertake activities that they would not otherwise.⁶ Manne notes, for example, that the Securities Act requires the disclosure of certain undertakings and that financial statements conform to generally accepted accounting principles—despite the fact that such are not universally undertaken or desirable.⁷

Manne attacks the public goods justification for mandatory disclosure, which holds that firms will voluntarily disclose a suboptimal amount of information because they cannot capture its benefits (which are dispersed widely among investors in a non-rivalrous manner).⁸ He first criticizes the public goods-efficiency justification for mandatory disclosure on the grounds that it may undermine productive efficiency by reducing the incentive to produce in the first place. He also argues that there is a related problem with placing questions about disclosure requirements and enforcement at the discretion of the Securities and Exchange Commission (SEC). More fundamentally, Manne argues against the public goods nature of financial information due to its rapid absorption into the prices of securities. Information is consumed by investors when it is disclosed, thereby becoming less valuable, and different, to those that fail to immediately trade upon it. This rationale would not apply to the extent securities are not publicly traded, such as private company shares.

Manne views mandatory disclosure for public companies as a form of anti-competitive rent-seeking, whereby incumbent firms gain an advantage by imposing regulatory requirements on existing and potential competitors that are less able to comply.⁹ As evidence of this phenomenon, Manne observes that the underwriting practices used by the leading Wall Street underwriters were essentially codified into the Securities Act. Accordingly, he argues, doing so placed Wall Street underwriters at a competitive advantage to smaller underwriting firms with different practices targeted to relatively high-risk issuers.¹⁰ He also notes the inherently regressive nature of mandatory disclosure, due to larger public companies, sell more shares than smaller ones, thereby better absorbing the disclosures costs applicable to both.¹¹ Likewise, smaller companies that privately issue securities may be disproportionately impacted by mandatory disclosures due to generally being higher-risk than established firm and lacking audited financial state-

⁵ *Id.* at 23.

⁶ *Id.* at 29.

⁷ Manne, *supra* note 1, at 30.

⁸ *Id.* at 40-41.

⁹ *Id.* at 31-32.

¹⁰ *Id.* at 35-36.

¹¹ *Id.* at 48-49.

ments and a track record upon which to base their disclosures.¹² Whether or not firms actually use disclosure rules to benefit themselves at the expense of their competitors, it is important to note that mandatory disclosure has a competitive impact and produces both winners and losers.

In addition to the observation that any disclosure is costly, Manne notes that mandates may have broader costs because disclosures may have zero or negative value to investors. For example, he argues that most information mandated to be disclosed on Form S-1 for new issues is not valued by investors due to it being out of date.¹³ Manne notes an admission by a then-SEC commissioner that mandatory quarterly disclosures are not valuable due to much of the information being stale by the time it is disclosed. He criticizes the Securities Act more broadly on the grounds that it likely requires disclosure of irrelevant information and not information investors would want to know about.¹⁴ Prospectuses are unread because they are not useful, a result driven in part by the boilerplate language used to avoid liability.¹⁵

All mandatory disclosure regimes suffer from a fundamental flaw in Manne's view in that no amount of information about the past can sufficiently predict the future—and hence investors' returns.¹⁶ Implicit in these criticisms of mandatory disclosure is that, to the extent investors rely on the disclosure, a market for lemons is created. If the information is stale and has no value, investors cannot distinguish between good and bad firms, and will therefore discount all companies accordingly. The only benefits that Manne recognizes from Securities Act disclosures are providing the SEC with a powerful enforcement device, competitors with valuable information, and securities analysts with fodder for their research.¹⁷

Another cost of mandatory disclosure is revealing irrelevant information that investors falsely believe is relevant, such as financial statements subject to the SEC's conservative accounting rules.¹⁸ In this, Manne is implicitly arguing against a one-size-fits-all approach to accounting standards—even among public companies—and making an observation consistent with the large body of disclosure-based accounting research that has emerged in recent decades. Mandatory disclosure also places a cost on relatively less risk-averse investors seeking to invest in small, high-risk companies that are unable to make the disclosures required of public companies.¹⁹

¹² *Id.* at 49.

¹³ *Id.* at 37.

¹⁴ *Id.* at 44-45.

¹⁵ *Id.* at 44-45, 47.

¹⁶ Manne, *supra* note 1, at 52.

¹⁷ *Id.* at 38-39.

¹⁸ *Id.* at 39, 43-44.

¹⁹ *Id.* at 50-51.

Manne also recognizes that regulation of public companies creates different disclosure regimes—public and private—each with relative costs and benefits.²⁰ Accordingly, he notes evidence supporting the theory that mandatory disclosure increases private placements due to its costs.²¹ And in recognizing the relative costs of being public or private, Manne notes that while private placements may generally be more attractive, a proposed SEC rule would have made them relatively less attractive compared to going public.²² When companies have a choice among disclosure regimes, the relative costs of disclosure matter.

Although not made explicit in Manne's article, he would likely oppose any form of mandatory disclosure on the basic economic grounds that the market for information is fundamentally functional. Given that at least some significant portion of investors demand disclosure, firms would disclose valuable information voluntarily, and efficient capital markets would set the proper price. Indeed, this is more likely the case now than it was when Manne was writing, due to the growing institutionalization—and hence sophistication—of public company investors.

II. THE ECONOMICS OF DISCLOSURE

The empirical and theoretical study of business disclosure, and related areas such as accounting standards and regulation, has grown into a vast space since the publication of Manne's 1974 article. The literature addresses issues relating to the nature, content, form, timing, costs and benefits, and law and standards of disclosure. In recent years, there have been several lengthy reviews of the vast literature.²³ This section summarizes general findings to give a broader context of Manne's article.

Extensive research has found that disclosure has benefits. Disclosure reduces information asymmetry by informing investors before they purchase securities. It also reduces agency costs while they remain investors.²⁴ Specific benefits from disclosure are increasing investors' willingness to purchase shares, a lower cost of capital, and higher market liquidity for

²⁰ *Id.* at 47.

²¹ *Id.* at 47-48.

²² *Id.* at 48.

²³ See generally Christian Luez & Peter Wysocki, *Economic Consequences of Financial Reporting and Disclosure Regulation: A Review and Suggestions for Future Research*, 50 J. ACCT. & ECON. 525 (2016); Anne Beyer et al., *The Financial Reporting Environment: Review of the Recent Literature*, 50 J. ACCT. & ECON. 296 (2010). However, one area that seems severely underdeveloped is research about private company disclosures.

²⁴ Ann Gaeremynck & Mathijs Van Peteghem, *Costs and Benefits of Disclosure*, in THE ROUTLEDGE COMPANION TO ACCOUNTING, REPORTING AND REGULATION 144, 145 (Carien van Mourik & Peter Walton eds., 2014).

securities.²⁵ These benefits generally apply to both equity holders and debt holders.²⁶ Driving these benefits is the fact that investors demand some level of disclosure and punish firms they deem opaque.²⁷ In new, entrepreneurial ventures, information asymmetry and agency costs may be particularly acute.²⁸ However, mandatory disclosure may be relatively ineffective and costly for such companies. They likely lack a track record, and disclosure is unable to reduce the radical uncertainty that surrounds new ventures.

Direct costs of disclosure include costs from obtaining, preparing, and publishing information.²⁹ These direct costs may have become lower in recent years through the adoption of information technology, however. Likewise, the SEC's mandate that companies use machine-readable language in financial disclosures in the form of the eXtensible Business Reporting Language may make such disclosures more useful to investors in terms of reducing information asymmetries and agency costs.³⁰

Indirect costs of disclosure include those from revealing proprietary information, verifying the information, and potentially exposing one's risk to litigation.³¹ In addition, mandatory disclosure seems to crowd-out private information production.³² It may also cause managers to focus on short-term goals or produce hard information at the expense of investment.³³ Short-term benefits from higher mandatory disclosure may be outweighed in the long run by better operating performance.³⁴

Theoretical research confirms that firms take into account costs and benefits when making disclosure decisions.³⁵ Accordingly, if firms have a choice between disclosure regimes, they will choose the most optimal from

²⁵ Gaeremynck & Peteghem, *supra* note 24, at 145; Christof Beuselnick, Marc Deloof & Sophie Manigart, *Financial Reporting, Disclosure, and Corporate Governance*, in THE OXFORD HANDBOOK OF CORPORATE GOVERNANCE 290,292-93 (Mike Wright et al. eds., 2013).

²⁶ Gaeremynck & Peteghem, *supra* note 24, at 146.

²⁷ *Id.* at 145-46.

²⁸ Ronald J. Gilson, *Engineering a Venture Capital Market: Lessons from the American Experience*, 55 STAN L. REV. 1067, 1076 (2003).

²⁹ Gaeremynck & Peteghem, *supra* note 24, at 147-48.

³⁰ See, e.g., Joung W. Kim, Jee-Hae Lim & Won Gyun No, *The Effect of First Wave Mandatory XBRL Reporting Across the Financial Information Market*, 26 J. INFO. SYS. 127, (2012).

³¹ Gaeremynck & Peteghem, *supra* note 24, at 148; Beuselnick, Deloof & Manigart, *supra* note 25, at 294.

³² Ya Tang, *Information Disclosure and Price Discovery*, 19 J. FIN. MKTS. 39, 40 (2014); Brian J. Bushee & Christian Leuz, *Economic Consequences of SEC Disclosure Regulation: Evidence from the OTC Bulletin Board*, 39 J. ACCT. & ECON. 233, 261 (2005).

³³ Alex Edmans, Mirko Heinle, & Chong Huang, *The Real Cost of Disclosure* 4 (Nat'l Bureau of Econ. Research, Working Paper No. 19420, 2013), <http://www.nber.org/papers/w19420>.

³⁴ Tim Jenkinson & Tarun Ramadorai, *Does One Size Fit All? The Consequences of Switching Markets with Different Regulatory Standards*, 19 EUR. FIN. MGMT. 852, 884-85 (2013).

³⁵ Paul M. Healy & Krishna G. Palepu, *Information Asymmetry, Corporate Disclosure, and the Capital Markets: A Review of the Empirical Disclosure Literature*, 31 J. ACCT. & ECON. 405, 406-07, 422 (2001).

a cost-benefit perspective. Indeed, research has found that private offerings became more widely used after the passage of the Securities Act and Exchange Act.³⁶ This generally supports Manne's view that mandatory disclosure is cost prohibitive for some firms that would otherwise go public. Mahoney and Meil find little evidence that the 1930s securities acts reduced information asymmetry.³⁷

Mandatory disclosure is justified on numerous grounds, including to prevent opportunism by insiders, as a signal that the firm is willing to disclose both positive and negative information, to increase confidence in the markets, and to produce externalities in the form of valuable information about other companies.³⁸ For this last justification, information is viewed as a public good that creates free riders and, as with all such phenomenon, is insufficiently produced without regulation requiring its production (i.e., disclosure).³⁹ Mandatory disclosure is also justified on the grounds that it provides a commitment mechanism that voluntary disclosure cannot.⁴⁰

Overall, the benefits of disclosure at some point become limited, and may even cause harm, due to investors' cognitive limitations and behavioral biases. These include limited attention spans and confirmation bias.⁴¹

III. DISCLOSURE BY NONPUBLIC COMPANIES

A. *The Three-Tiered SEC Disclosure Regime*

The U.S. securities law disclosure regime has changed in many fundamental ways since Manne's article. Today, instead of public companies being subject to wide-ranging disclosure rules and private companies subject to comparatively none, there are three broad disclosures regimes:

³⁶ Gregg A. Jarrell, *The Economic Effects of Federal Regulation of the Market for New Security Issues*, 24 J.L. & ECON. 613 (1981); Jurgen Ernstberger, Benedikt Link, Michael Stich, & Oliver Vogler, *The Real Effects of Mandatory Quarterly Reporting*, (2016), <http://ssrn.com/abstract=2604030> (finding "greater short-termism arising from increased reporting frequency").

³⁷ Paul G. Mahoney & Jianping Mei, *Mandatory vs. Contractual Disclosure in Securities markets: Evidence from the 1930s* 28 (Univ. of Va. L. Sch. The John M. Olin Prog. In L. & Econ. Working Paper Series, Paper 25, 2006).

³⁸ BEUSELNICK, DELOOF & MANIGART, *supra* note 25 at 296-97.

³⁹ Frank H. Easterbrook & Daniel R. Fischel, *Mandatory Disclosure and the Protection of Investors*, 70 VA. L. REV. 669, 681 (1984); John C. Coffee Jr., *Market Failure and the Economic Case for a Mandatory Disclosure System*, 70 VA. L. REV. 717, 725 (1984).

⁴⁰ See Lin Cheng, Scott Liao & Haiwen Zhang, *The Commitment Effect Versus Information Effect of Disclosure—Evidence from Smaller Reporting Companies*, 88 ACCT. R. 1239 (2013).

⁴¹ Susanna Kim Ripken, *The Dangers and Drawbacks of the Disclosure Antidote Toward a More Substantive Approach to Securities Regulation*, 58 BAYLOR L. REV. 139, 160-90 (2006). See generally OMRI BEN-SHAHAR & CARL E. SCHNEIDER, *MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE* (2014).

- pure private placements (to accredited investors);⁴²
- a middle-tier that consists of an IPO on-ramp process for emerging growth companies, a “mini-IPO” under so-called “Regulation A+,” and crowdfunding;⁴³ and
- full-blown public registration subject to federal securities law and exchange listing requirements.

The JOBS Act created all three categories in the middle tier. They are characterized by small companies not being required to file a public-company registration statement with the SEC, yet nonetheless being subject to significant mandatory disclosures at the time of offering, and potentially periodic reporting as well. Overall, the JOBS Act reduced the disclosure obligations for companies seeking to raise funds outside of the confines of a private offering.

Title I of the JOBS Act created a new category of companies under the Securities Act known as an “emerging growth company” (EGCs) that have less than \$1 billion in revenues in their most recent fiscal year. The purpose is to create an extended IPO on-ramp process for growing companies that gives them additional time to adopt the full disclosure and accounting requirements of a public company. Although an EGC must submit a draft IPO registration statement confidentially to the SEC, an EGC only needs to make scaled disclosures. Among other reduced disclosures, an EGC does not need to include certain financial information for periods before those presented for the IPO, is not required to disclose the relationship between executive compensation and financial performance, and does not need to obtain auditor attestation to internal controls.

Under what is widely referred to as “Reg A+,” Title IV of the JOBS Act allows companies to undertake a “mini-IPO” to raise up to \$50 million from the public without being required to comply with the full range of disclosure and other SEC obligations. Companies are permitted to raise up to \$50 million from freely tradable securities in any twelve month period. However, under Reg A+, companies are required to file an offering circular with audited financial statements to the SEC. Under Reg A+ companies are also permitted to “test the waters” to determine interest in their offering before making any filings. This helps companies by reducing the risks of bearing substantial costs only to make a failed offering.

Title III of the JOBS Act created an entirely new regime designed to enable equity and debt crowdfunding. A company can raise funds by sell-

⁴² For example, under the widely used Regulation D exemption, there are no limits on offering amounts and preempts state regulation.

⁴³ Supporting these types of quasi-public companies is the JOBS Act increasing the existing threshold from 500 to 2000 investors before imposing mandatory Exchange Act periodic reporting and other requirements on a company.

ing an unlimited number of unregistered securities to the public—not just wealthy or sophisticated accredited investors. In any 12-month period, the rules limit a company to raising \$1 million and limit ordinary investors to investing no more than \$100,000. Crowdfunding companies must file Form C containing extensive disclosures, including about issuer's business, its capital structure, how its securities were valued, and a narrative of its financial condition. Companies making a first-time crowdfunding offering of more than \$500,000, but not more than \$1 million, are not required to produce audited financial statements due to the SEC's recognition, in response to public comments, of the costs involved. Companies raising less than \$500,000 in a crowdfunding need only produce financial statement reviewed by an independent accountant or certified by the company's CEO. In theory, the crowdfunding rules enable small companies to raise small amounts of funds from numerous investors without costly registration and compliance requirements.

B. *Case Study of Private Disclosures: Hedge Fund Disclosures*

Given that Manne would likely support at most an extremely limited regime common-law driven mandatory disclosure, it is worth exploring what disclosures would be made by companies to sophisticated yet passive investors seeking to buy and hold shares in a diversified portfolio. The disclosures made by startups to venture capital firms are extensive, frequent, and voluntary. However, they are made in the relatively unique circumstance of a new company seeking not just capital but also the substantive expertise and professional networks provided by VCs. Startups' disclosures to VCs are accordingly likely not representative of what voluntary disclosures to investors would look like without mandates.

The disclosure practices of hedge funds seem to provide a better case study than startups. Hedge fund investors, as limited partners, are ultimately passive investors that do not participate in any management decisions. Accordingly, the disclosures made by hedge funds may better approximate the type that would be made by companies under a regime without mandatory disclosure where investors are sophisticated yet passive.

Notably, hedge fund investors have strong preferences about disclosure. Investors seek disclosures about risk that are comprehensive, intelligible, and anywhere from monthly to real-time. Investors desire detailed and frequent performance reporting, and to have the fund precisely identify the fund's investment strategy, so as to monitor the manager's investments and prevent a deviation from the fund's stated strategy. In practice, an estimated 89 percent of hedge funds make at least monthly disclosures to in-

vestors.⁴⁴ In addition to performance, these disclosures typically describe what returns were attributable to a given strategy and various measures of risk-adjusted performance. Since the financial crisis of 2008, hedge fund investors have been receiving greater disclosures and more transparency from hedge funds. Hedge fund investors demand higher quality operational practices when they perceive a fund to be organized in a jurisdiction with lax enforcement or if the fund is less established. Investors also price in the risk of fraud and other operational problems by paying lower fees to funds with weaker operational practices.

The voluntary disclosures by hedge funds to their sophisticated investors seem to confirm a basic proposition supported by Manne's article; namely, regulation is not required for high-quality disclosures to take place.

C. *The Crowdfunding Disclosure Regime and Manne's Disclosure Critique*

As a form of middle-tier mandatory disclosure, companies raising funds under any of the three regimes created by the JOBS Act are subject to greater disclosure requirements and other restrictions than standard private placements. For this reason alone, their disclosure may not be optimal under Manne's framework simply because they do not reflect what would be made under a pure make-for information. For example, unlike nonpublic companies raising capital through traditional private offerings, crowdfunded firms must disclose their capital structure, use of offering proceeds, and a narrative discussion of their financial condition. They must also amend Form C to disclose any material changes and make annual reports. Private placements typically do not have periodic reporting requirements or place limits on the amounts able to be raised by companies. Unlike private placement, crowdfunding securities potentially impose strict liability on funding platforms, companies, and individual officers and directors. As Manne would note, this likely reduces the usefulness of their disclosures due to fear of liability.

In accordance with Manne's view, the middle-tier disclosure regime created by the JOBS Act⁴⁵ may also have a competitive impact. The JOBS Act was signed into law by President Obama on April 5, 2012. The interest groups behind the Act included a wide range of small businesses, entrepreneurs, technology industry participants, and investors. Because the Act is best viewed as a reduction in regulation, Manne's understanding of rent-seeking regulation does not apply with respect to the public company, non-public company divide. However, Manne's theory of competitive dis-

⁴⁴ PRICEWATERHOUSECOOPERS, *TRANSPARENCY VERSUS RETURNS: THE INSTITUTIONAL INVESTOR VIEW OF ALTERNATIVE ASSETS* 50 (March 2008).

⁴⁵ Jumpstart Our Business Startups Act, 112 P.L. 106, 126 Stat. 306 (2012).

closure may apply as between private companies. In theory, at least, private companies have a broad range of potential financing options available to them, including traditional venture capital (VC) firms under a pure private offering, as well as crowdfunding under middle-tier disclosure. In principle, VCs compete with the public to fund new ventures. A trade publication noted this potential competition:

When equity-based Crowdfund investing first came on the scene earlier this year, there was talk of how it might possibly “crowd out” venture capitalists. While historically venture capital firms and angel investors have been the dominant force in early stage financing for startups, Crowdfund investing, legalized by this year’s JOBS Act, is yet another funding mechanism that will bring a whole new class of investors into the capital markets In recent years, VC firms have been criticized for lackluster performance, with only half of funded startups yielding a return, and although \$30 billion has gone into venture-backed companies in the U.S. this year, venture capital investments have not outperformed the equity markets in more than a decade However, with increasing competition from incubators/accelerators and now equity-based Crowdfund investing, some feel uncertain about the future of traditional VC and angel investing. The fact is that the startup ecosystem is changing due to major competition. All this raises the question: will Crowdfunding be a direct competitor with venture capital and angel investors?⁴⁶

Anecdotally, VCs have criticized Title III of the JOBS Act as creating a regime for only the poorest quality companies of raise funds. Notably, not a single prominent VC firm filed a comment to the SEC in support of the agency’s crowdfunding proposal or submitted any recommendations on how to reform the proposal’s overly restrictive provisions. Accordingly, under Manne’s competition theory of mandatory disclosure, VCs may be losers if crowdfunding takes off and takes away potential startups for VCs to invest in.

Although crowdfunding is subject to less disclosure requirements than public companies, a lingering question from Manne’s analysis is whether an even less onerous crowdfunding disclosure regime is desirable. Based on the experience of U.K.-based crowdfunding, the answer seems to be “yes.” The U.K. equity crowdfunding market raised nearly \$2 billion in 2014 alone with fraud being a very rare occurrence.⁴⁷ This is despite the fact that U.K. crowdfunding is subject to a much lighter disclosure and regulatory regime than that under the JOBS Act. Although U.K. authorities require startups using crowdfunding portals to disclose important information about themselves and monitor their disclosures, the U.K. regime does not require the disclosure of any specific information and does not impose periodic

⁴⁶ Simon Erlich, *Crowdfunding: Threat or Opportunity for Venture Capitalists and Angel Investors?*, RED HERRING (Dec. 6, 2012), <http://www.redherring.com/top-stories/crowdfunding-threat-or-opportunity-for-venture-capitalists-and-angel-investors/>.

⁴⁷ *Global Crowdfunding Market now Worth \$30 Billion* CONSULTANCY UK (Sept. 14, 2015), <http://www.consultancy.uk/news/2593/global-crowdfunding-market-now-worth-30-billion>.

reporting requirements.⁴⁸ Instead of mandatory disclosure, U.K. crowdfunding portals help determine what startups using their platform should disclose based on the costs and benefits of disclosure as well as demand from investors.

CONCLUSION

Even four decades after the publication of Manne's article criticizing mandatory disclosure, the issues raised and arguments made are still relevant. The impact and proper regulation of disclosure remains an open question today. By contrast, less of an open question is the appropriateness of one-size-fits disclosure regimes. With the rise of disclosure regimes for startups and other methods of allocating capital outside the framework of a full-blown public company regulatory regime, the securities acts that Manne criticized are becoming increasingly antiquated in retrospect.

⁴⁸ Financial Conduct Authority, *A Review of the Regulatory Regime for Crowdfunding and the Promotion of Non-readily Realisable Securities by other Media*, FINANCIAL CONDUCT AUTHORITY 1, 6-9 (2015), <http://www.fca.org.uk/static/documents/crowdfunding-review.pdf>. See also Engine Advocacy, *Financing the New Innovation Economy: Making Investment Crowdfunding Work Better for Startups and Investors*, ENGINE 1, 19-21 (Oct. 2015), <http://static1.squarespace.com/static/571681753c44d835a440c8b5/57323e0ad9fd5607a3d9f66b/57323e14d9fd5607a3d9fb53/1462910484566/Crowdfunding-White-Paper.pdf?format=original>.

