

directors. This proposal would reverse this tradition and direct the courts to substitute their judgment for that of businessmen. Certainly the pricing of a product or service is at the heart of any business operation.

I do not question the competence of a court to determine the reasonableness of a price. Courts, and juries as well, have often been required to do so. They have done so, however, generally in situations where it was necessary to resolve a controversy between private litigants and where the determination would normally affect only the litigants and then only with respect to a particular completed transaction. The practical effect of the proposal in H.R. 9510 and 9511 is to put the courts in the business of regulation; it would impose upon the courts the responsibility and necessity to set prices at which an industry must offer its services in the future. This has never been regarded as the function of our judiciary.

In another respect this proposal is an even more far reaching innovation. This industry is not a public utility. It enjoys no anti-trust exemption permitting a price-fixing agreement among mutual fund managers.

It is a non-protected industry where free entry exists. I know of no statute in the history of the United States absent war time, which gave either a federal agency or a court the power to prescribe the price for a product or service in a competitive industry, and thereby the power to regulate the profits of an industry in accordance with whatever in its judgment it deems to be appropriate or reasonable. This Bill does just that, and I believe it is the first in our history to do so.

Moreover, not only the courts would be engaged in the business of regulating management fees. As a realistic matter this proposal gives to the SEC itself the power virtually to set management fees through threat of litigation and its control over proxy and prospectus requirements.

As I mentioned before, I do not suggest that the fact that this proposal is a significant innovation in our social and economic system determines whether the proposal is wise or unwise. I do submit, however, that there is imposed on the proponent of such legislation the obligation to provide at least some reliable indication of what the probable consequences of the innovation would be. The SEC has not even undertaken to do so. It has given this Committee no evidence whatever of the probable consequences of its proposal either to the industry or to the millions of people whom the industry serves.

If this proposal is enacted, management fees, instead of being governed by the interplay of economic forces and negotiations, as now, would be set by the SEC or a court without the consent of those engaged in the business. Here are some of the questions that arise.

If, as a consequence, management fees were reduced below what competitive forces would otherwise produce, what would be the results? Will the quality of the service suffer? Will the entrance of new companies into the business be inhibited? Will the sponsorship of new funds by those management companies already in the business be deterred? Will newer entrants who have not yet achieved a profitable level of operations be discouraged from continuing? Will the development of new services for fund customers be retarded? Will there be endless litigation or instead will absolute uniformity in both fees and services in the industry result?

Contrast these uncertainties with the known results of the present system. Concentration in the industry is diminishing. The variety and availability of services is increasing. The quality of the service is improving. And the cost of the service to the consumer, the fund shareholder, is decreasing.

We urge you not to replace the dynamic force of a competitive system that is working with a new and untried system having unknown and unforeseeable consequences.

CONTRACTUAL PLANS

The IDS contractual plan—Investors Accumulation Plan—might well have been discussed in my comments on IDS' distribution system because it is a form of distribution. However, in view of the particular concern which the SEC has expressed about contractual plans because of the front-end load feature, this subject is treated here separately.

In September of 1965, after several years of study, IDS introduced a contractual plan for the accumulation of mutual fund shares. We decided to do this because new methods were required to meet the needs of the expanding market