

Mr. WATKINS. Mr. Chairman?

Mr. MOSS. Mr. Watkins.

Mr. WATKINS. I would like to ask a question of you, if you would care to answer it, if you are in a position to.

Do you think that the Congress of the United States has any legal right to regulate this money?

Mr. LOEFFLER. By legal right, if you mean constitutionally—

Mr. WATKINS. Constitutionally, do they have a legal right to do it?

Mr. LOEFFLER. I see no constitutional question, sir.

Mr. WATKINS. You see none?

Mr. LOEFFLER. No, sir.

Mr. WATKINS. Thank you.

Mr. MOSS. As a matter of fact, you are operating under a congressionally imposed ceiling at the present time, are you not?

Mr. LOEFFLER. With respect to contractual plans, that would be so; yes, sir.

I would like if I may to make a few comments with respect to the Commission's proposal relating to the management fee. The proposal, as I am sure you are familiar, is merely to put into the statute a statutory requirement that management fees be reasonable. Certainly I, and I think all responsible businessmen, would feel that management fees should be reasonable, and indeed any businessman would feel that the price for his product or his service should be reasonable.

The question really is one of upon what system shall we rely to produce a reasonable price level? Basically there are, of course, two systems which can be utilized. One is a system of free competition, such as generally prevails in the United States and in most industries. The other system is a system of regulation.

The proposal, in effect, is to substitute a system of regulation for the system of free competition which presently prevails in the industry. And that is the question.

I do not say that critically. I say it only in order to pose what I believe is the issue. The SEC states that the reason—well, let me first make one further comment on that.

When I describe the proposal as regulation, it is for this reason: This proposal would give to the courts or to the Commission, which one is immaterial, the power to establish the price for the investment services being sold, the power to establish the price independently of a price which might have been agreed upon between the suppliers of the service, the management companies, and the purchasers of the service. Now whenever a third party who is not a party to the transaction, such as the court as it would be in this case, is given the power to set the price, that is regulation, and that is what we would have here.

The SEC, in support of its recommendation that we go to a regulatory system with respect to management fees, has taken the position and charges that the present system is not working in the interest of the consumers, the ultimate consumer, the fund shareholder who uses the services and pays the charge. The Commission's charge is that it is not working effectively because, if it were, as the funds have grown in size over these past few years, the inevitable conse-