

Mr. LOEFFLER. In addition to that form of competition, we do have these very extensive and prolonged negotiations with a committee of the fund board. There is reference to them in my written statement at some length. During those discussions and those negotiations, the charges made by every other fund manager are reviewed at some length. Are we being competitive? Are we meeting them? When we reduce ours, I know this happens elsewhere, and it is the pressures of this and the combination of all these circumstances which result in the continuous lowering of the charge.

I think the fact that we have reduced the cost to our investor, per dollar of investment, by more than 43 percent in the last 5½ years would indicate that something must be working, and working effectively. Else I think I run the charge that IDS has become an eleemosynary institution, and if so, then we would have a great deal of difficulty in answering to our own 14,000 public shareholders. I think that the results indicate the operation and effectiveness of the system.

If I might go on more directly to the Commission's proposal on this, the question would immediately arise, I am sure, that if we believe, as we do believe, that our charges are reasonable, and that we would have no difficulty in justifying and sustaining a challenge upon those charges under a standard of reasonableness, why do we object to putting that standard and that requirement into the statute. I would like to address myself to that briefly, hopefully briefly, with respect to a few points.

As I have said, once that is put into the statute, it substitutes the regulatory system for the present system, and the question becomes then, who is going to determine the reasonableness of the price level? It no longer becomes those who are engaged in the business and who have the responsibility for the conduct of the business, but it becomes some third party who is not a party to the transaction. Under this proposal initially a judge, any one of a thousand judges throughout the United States—I am sorry, sir, did I interrupt?

Mr. WATKINS. No, you go right ahead. You are hitting on my question that I asked you. Please continue.

Mr. LOEFFLER. Now there are several aspects of this particular proposal which are quite unique. I do not suggest that the mere fact that it is unique answers the question as to whether it is wise or not, but I think it is important to a determination of that to recognize these facets of the proposal, in order to evaluate it.

The first is that it creates a unique function for our judiciary. Historically, our courts have taken the position that they will not substitute their judgment for the business judgment of directors or those engaged in running the business, absent some showing of malfeasance or something of that nature.

This proposal not merely empowers the court to substitute its judgment for that of the directors of a corporation. It directs and mandates that the court substitute its business judgment upon the pricing of a product for the business judgment of the directors who had theretofore agreed to it. Again, I am not questioning whether the courts might or might not be competent to do so, but this historically has not been and is not generally the function of our judiciary.

There is a second aspect of this proposal which again is unique and which I think we should be aware of, and that is that it is a complete