

innovation in our present economic system in this sense. It puts a regulatory pattern or system on an industry which is not a utility, which is an industry in which open and free competition exists. There are 100 fund sponsors today. New ones are entering the business daily. There is no restriction upon the entrance to the business. Neither is it a utility in the sense that one must be franchised, nor that only one exists, nor that the customer must purchase the service as a matter of absolute necessity.

So far as I have been able to discover, this would be the first statute in the history of the United States, other than in wartime, where Congress would have imposed a regulatory system on a competitive industry.

There is a third point which I think also should be borne in mind in evaluating this proposal, and that is the effect that it has as a nullification of State corporate law. A fund management contract will have been offered by the management company and agreed to by it. The purchase is purchased after disclosure to the fund shareholders. The contract is approved annually by fund directors, and any change approved by the stockholders of the fund themselves.

Now then, this proposal directs the court to completely disregard the effect which State law gives to shareholder approval of a fund contract. It nullifies State law and the effect which State law gives to shareholder approval. This applies to all 50 States.

Now the point which I would like to make is this. This is premised by the SEC on the contention that when shareholders vote upon a matter submitted to them by the management of a corporation, in the absence of a proxy fight the vote is meaningless and routine. Therefore, the Commission says no effect should be given to it.

Well, if there is validity to that argument and to that position, it is certainly equally applicable to shareholder approval of transactions of all publicly owned corporations.

There is nothing unique or distinctive about mutual funds in this regard as distinguished from any other publicly held corporation.

Now if Congress is going to declare as a finding, which it does when it accepts that position, that shareholder approval in a publicly owned corporation is a meaningless act, and should not be given the effect which the laws of our 50 States give to it, then such a congressional declaration portends the same sort of action generally, because if the shareholders of mutual funds need to be protected from the effect of their own vote and own approval, so do the shareholders of General Motors, of A.T. & T., and of any other publicly held corporation.

I think that this finding, whether it be wise or unwise, be that as it may, has portent far beyond the mutual fund industry. It has implications in the general corporate law, the creation of a Federal common law in this area or a Federal corporate law nullifying the corporate law of our 50 States. Again, I mention this only because I think there should be awareness of it as a consequence of this proposal.

Mr. WATKINS. May I interrupt you? Then you do agree? You said before that you had no quarrel. In your testimony now it seems you do have a little quarrel.

Mr. LOEFFLER. I beg your pardon, sir. I think I may have misspoken myself. I said I had no quarrel with the proposition that management fees should be reasonable.