Mr. KEITH. You mean the unaffiliated directors.

Mr. LOEFFLER. Yes, sir.

Mr. KEITH. Who appoints them?

Mr. LOEFFLER. Well, they are nominated normally. The usual procedure is that a board, in submitting its slate of directors to the shareholders annually, the board nominates the board, so they would be in effect continuously self-appointing. May I be specific on that, sir?

Mr. KEITH. Would they be likely to be reappointed if they chose to hire another firm than that which currently uses it, because the other firm offered to give them the same services at less cost?

Mr. LOEFFLER. They would have the power within themselves. May I be a little bit more specific, sir? Let me take IDS, for example. The IDS funds each have 12 directors. Of those 12 directors, two are affiliated with IDS. None of the other 10 directors are affiliated in any way with IDS.

Now when those funds select the slate of directors for the succeeding year, the nomination is made by the 12. Obviously the majority of those directors, and therefore the control of the board for that purpose, is among those who have no affiliation with IDS. The power resides in those who have no affiliation with IDS because they are the majority.

Mr. KEITH. I understand that, but this does not seem to me to be the usual situation that obtains in the usual corporate structure. It seems to me to be a unique arrangement worked out by this committee earlier in its history to provide for the continuation of the mutual fund industry.

But it seems to me that the standard to which they must refer—namely, either stockholder approval or unconscionable compensation—the stockholder is not in the same situation. He has a yes or no vote ordinarily on the approval or disapproval of the management fee, and he is not dealing with the same situation as exists in the usual stockholder case.

Mr. LOEFFLER. Let me perhaps add then, sir, if in fact the approval of the management contract is by a board of directors of the funds, of which a majority are affiliated with the management company, in other words, so that you really have——

Mr. KEITH. Even if this law didn't exist as it is at the moment.

Mr. LOEFFLER. No, sir. Even if the Investment Company Act didn't exist, the law would be the same in this area.

Mr. KEITH. All right.

Mr. LOEFFLER. The Investment Company Act does not create this situation. This would be the law without it.

Mr. KEITH. The law would still be there, but I think that they would have to turn to prove—there was a case that was pointed out to me about the American Tobacco Co., where they had an arrangement with the president of the company, a formula under which this individual was getting $5 million a year. A stockholder took this case to court and was able to prove that this wasn't reasonable compensation, because he was not giving any services in connection with this, and the compensation was cut down considerably. Are you familiar with this case?

Mr. LOEFFLER. I am familiar with the case. The effect was slightly different, sir.