

Next, I would like to address myself to SEC's proposals in Sections 8 and 25, that further regulations be imposed upon the fees charged by investment advisers. The SEC claims that management fees are excessively high and proposes that the Act be amended to provide that an investment adviser may be sued for the return of his fee if it is "unreasonable". The essence of the SEC criticism is that a management company will charge a mutual fund 0.5% annually for the management of the fund while a private account of the same amount will pay considerably less for comparable service.

It is unfair and misleading to compare the fees charged by a mutual fund management company with those of banks, trust companies and similar institutions. The quality and degree of service rendered are essentially dissimilar. While the fiduciary institutions give, at best, monthly supervision to their accounts, a firm of our size gives close attention on a daily basis. Further, the institution can allocate its cost of supervision over the entire spectrum of their operations and need not support this fiduciary function solely by income derived from their advisory services. In addition, there are corollary benefits that they derive from handling said funds.

Our firm charges, for the management of private accounts, 1% of average assets per year, or 10% of total appreciation during the same period of time, whichever sum is greater. Our firm purposely has injected an incentive feature to encourage us to actively and diligently manage our portfolios. We have one security analyst for every three and one-third portfolios. We review the securities in every portfolio every day. In fact, we conduct an hour-by-hour review of market conditions and the market price of each and every security which we hold. Thus, in our opinion, when the SEC compares fees of mutual fund management companies to *some* large private accounts it is not referring to fully managed high-performance accounts. Rather, it is referring to those accounts which are relatively inert, not fully managed—in our sense of management—and not competitive. There is published almost daily in newspapers a comparison of the performances of publicly held mutual funds. This places a burden on the management company which does not exist for banks, trust companies and other private managers, whose performance records are rarely, if ever, a matter of public record or interest.

The provisions of the Investment Company Act of 1940 provide that the shareholders of a mutual fund must approve the contract with the management company. Therefore, there is full disclosure, and the shareholders are fully aware of the terms and conditions of the contract. I do not believe that management companies make an excessive profit. As a comparison, the eighth largest advertising company, a service organization, last year made a larger profit than the second largest mutual fund management company in the United States.

The SEC further wishes to amend the definition of investment advisors to prevent firms such as ours being paid on the basis of an incentive fee contract, yet the SEC admits that performance should be a factor in determining fees, when it states on page 145 of its report, and I quote: "The sustained investment performance of a company would be an appropriate consideration in evaluating the reasonableness of its advisor's compensation." We use incentive fee contracts for some of our private portfolios. Our contract is designed to reward us in proportion to how well we perform for our client in relation to what he might have made, had his money been unmanaged. The incentive feature of a contract goes to the very essence of why an individual hires someone to manage his portfolio. The SEC, on page 73 of its report, attempts to justify its opposition to percentage fees and incentive contracts, and I quote: "Management fees based on a percentage of assets tend to avoid conventional limitations on executive salaries." This statement is misleading for we all know that today top management personnel are not limited to salary and are granted stock options, the value of which is clearly tied to performance.

Our firm is hired for the specific purpose of increasing the value of its client's portfolio. Why not encourage it to do so by permitting it to share in its growth? Our firm cannot hope to benefit from an incentive contract unless it, in fact, benefits its client. Incentive fees put a premium on performance and doing the best job possible for the client. Set fees will tend to put a premium only on holding on to an account and not performing so poorly as to lose it. Incentive fee contracts are fully consistent with the spirit of American business and government, which rewards an individual for excellence in performance.

In closing, I wish to state that in my opinion the Investment Act of 1940 and the Investment Advisors' Act of 1940 provide more than adequate protection