

The Commission's proposals relating to sales charges represent a sharp departure from the concept of self-regulation. Rather than seeking to strengthen self-regulation, the Commission asks for a statutory maximum on mutual fund sales charges of 5 percent of the net asset value of shares purchased. Further, the SEC asks that it be granted the sole authority to increase or change the maximum.

The exchange suggests that this proposal be rejected for the following three reasons:

First, no meaningful justification has been given by the Commission as to why self-regulation cannot be made to work in this area. Why SEC ratemaking authority is preferable also is a wholly unsupported concept.

Second, the Commission makes no showing that the investment fund industry is in fact a public utility and, hence, must have its rates regulated by a governmental agency.

Third, nowhere in the Commission's report is there evidence that it made any detailed analysis of the economic consequences of a 5-percent maximum. The report provides no estimate of the effect of the lower revenues on sales, on the services which funds provide customers, on profitability, or on the number of firms that might become so unprofitable as to be forced to leave the business. Certain industry studies indicate that the unfavorable impact on the industry and its customers would be enormous.

For these reasons, then, we oppose the SEC's proposal to set a 5-percent limit and strongly endorse the approach of strengthening self-regulation in the area of mutual fund sales charges.

We recognize that a number of problems remain to be resolved if the self-regulatory approach is to be followed. The NASD would be the most appropriate organization to be given this self-regulatory responsibility. We also support the NASD approach that the association initiate the necessary studies to develop effective guidelines for mutual fund sales charges. We are aware that problems exist with respect to the regulation of sales charges for broker-dealers that are not members of the NASD. While these problems are complex, we think that they can be resolved and that self-regulation can be made to work in this area.

MANAGEMENT FEES

Proposed section 8 of the bill would establish an entirely new standard in the law to give the SEC indirect ratemaking authority over management fees. This authority would replace the basic corporate concepts of authority, responsibility, and accountability of directors, and ought to be rejected for the following four reasons:

First, the bill suggests that new concepts be introduced in our securities laws, existing law be repealed, and numerous State court cases be overturned. It is appropriate to inquire, therefore, how this new concept will be superior to present law, and how it would improve the protection for fund investors.

Second, proposed section 8 of the bill places the task of determining whether a fee is, in fact, reasonable under the statutory standard on the courts. The adoption of the SEC approach could lead to a rash of legal suits against funds, investment advisers, and directors and