

alternative measures mentioned in our recommendation No. 9 on specialists, quoted at pages 2 and 3 above.

Your letter also asks for my comments on the problems outlined in the Special Study Report regarding the mutual fund industry, particularly the question of sales load and management fee. The Special Study did not really deal with the subject of management fees, its examination of the investment company area (Chapter XI, pages 89-255 of Part 4) having been limited essentially to a few topics closely related to studies undertaken by the Special Study in other areas: selling practices (including front-end loads), reciprocal business, and insider transactions in portfolio securities. On these subjects my personal views have not changed since the 1963 Report, but I should again say that I have not had the occasion or the means to examine more recent data that might be pertinent to present judgments.

Respectfully yours,

MILTON H. COHEN.

Mr. MURPHY. Mr. Lyman, as I understand your position, you are concerned only that you have to have one or two additional independent directors, and that your advisory fees which you now say are reasonable might be subject to some independent consideration. Of course, the question of additional nonaffiliated directors is one which will come up for consideration by the committee, but it is not clear yet that you advance this suggestion very seriously.

On the other hand, you do seem to be concerned about the management fee, even though as you state, your fees are reasonable, and you cannot argue against a test of reasonableness.

On page 16 of your statement you speak about the kind of stockholder's litigation that might be encouraged by the bill. I wonder if you would discuss this a little more at length, and whether you have a suggestion of how a court test of the reasonableness of fees can be secured without a great deal of litigation.

Mr. LYMAN. Well, I think that the only way that a court test can be achieved without any degree of litigation is for the company to give in. This is what has been going on in some cases. We think that it is a matter of degree here on the independent director. We wouldn't feel that under the present concept of the 10(d) companies the independent director had a necessarily special mission to agitate on the subject of the management fee, because the investor has come in without paying any entrance fee or initiation fee, if you like, and he is completely free to come and go as he chooses. Therefore, he is deemed to be capable of judging the reasonableness of the fee that he is buying. I won't say that our independent directors are not concerned with the fee. Of course they are. As good businessmen they are bound to be.

If our fees are unreasonable I am absolutely certain that we would hear about it from them. But I think under the concept of the 10(d) company there is not that special assignment, whereas there would be under the proposed law.

Mr. HAGEY. Could I comment just briefly, and perhaps add something to that?

Mr. MURPHY. Please.

Mr. HAGEY. I think all of us who have now quite well established no-load funds would recognize that if you went ahead and passed this legislation, we would live with it one way or another. We think that you would be doing some things to us, perhaps inadvertently, in attempting to deal with an overall problem which we think would be harmful.