tion, that isn't what the stockholders bought, and I don't see that there is any requirement on the directors to consider changing the setup." Mr. Alfred Jaretzki, Jr., University of Pennsylvania Law School Conference on Mutual Funds (115 U. Pa. L. Rev. 699, 747 (1967)).

It should be added, however, that since 1959, partly as a result of litigation involving over 20 of the Nation's largest and best known funds, the fees of a number of funds have been scaled down as the assets have grown in size. There are also indications that the unaffiliated directors of some funds periodically review the advisory contract and renegotiate the contract so as to reduce the management fee to reflect economies of scale, the quality of performance, and the like. See Statement of Mr. Robert M. Loeffler, Conference on Mutual Funds (115 U. Pa. L. Rev. 659, 736–37 (1966)).

Despite these exceptions, however, the facts are that the funds have had an enormous growth in the last few years; that management fees rose to staggering proportions; and that in many instances the economies that go with size have not been passed on to the fund shareholders.

It was inevitable that the enormous profits from management fees would make the advisory companies literally gold mines. Accordingly, there have been numerous sales of controlling stock interests in investment advisers, in which the sellers cashed in their chips at an enormous profit and at capital gain rates. A number of advisory companies have made a public offering of the common stock so that the company has become publicly owned. In one case, the selling shareholders reaped a harvest of over $40 million, after deducting underwriting costs, still retaining an interest of about 12 percent, in the management company.

I might say, parenthetically, that you have the curious feature of a fund having an advisory contract with an adviser organization which in a sense has control of the fund, and then which itself goes public, so that public shareholders invest in the adviser, rather than having internalization, and it really is a most curious type of financial structure.

Although the Investment Company Act as originally enacted attempted to cope with the problem, with the enormous growth of funds, the act provided a built-in protection to the fee contract, rather than furnishing a corrective. Section 36 authorizes the SEC to bring an action to remove any director, or investment adviser or underwriter, for "gross misconduct or gross abuse of trust in respect of any registered investment company." In *Brouk* v. *Managed Funds, Inc.*, 286 F. 2d 901 (8th Cir. 1961), the court questioned whether by virtue of section 36 a private right of action existed which could be enforced by shareholders, either derivatively, or by a class action, to recover excessive fees paid. See, however, *Brown* v. *Bullock*, 294 F. 2d 415 (2d Cir. 1961), where the court indicated the possibility of an action under the Investment Company Act.

If a private right of action exists, section 44 vests concurrent jurisdiction in the State and Federal courts. The question is open as to what standard the court would apply in determining the propriety of the fees charged.

Under State law, the courts have been inclined to accept the fund-management company format and refuse to intervene unless the fees