are regarded as unconscionable or shockingly excessive. Thus, in the leading case of *Saxe* v. *Brady*, 184 A. 2d 602 (Del. Ch. 1962), the Delaware Chancery Court held that, even assuming that an independent board did not in fact exist, when the shareholders approved the contract, the management company is relieved of the normal burden of a fiduciary to establish the fairness of the contract; the burden then falls upon the shareholder-plaintiffs "to convince the court that no person of ordinary sound business judgment would be expected to entertain the view that the consideration was a fair exchange for the value given" (p. 610). In that case the adviser's fee was the flat one-half of 1 percent rate. Defendants showed that almost 60 percent of the funds in 1961 were charging that rate while almost 30 percent were even higher. Plaintiffs then claimed that the dollar amounts paid under the arrangement were excessive. While some other comparable funds with a sliding scale schedule paid lower fees, the court felt that this did not establish an outer limit. Nor was the sharp rise in profits as a result of an enormous growth in the fund determinative. As the court put it: "[T]he very nature of the compensation arrangement (percentage of asset value) lends itself to the payment of sums having no necessarily reasonable relationship to the 'value' of such services if tested by compensation standards usually applied in the business community." The court stated, however, that under the flat fee arrangement "at some point the relationship between admittedly reasonable expenses and net profit can become so disproportionate as to be shocking by any pertinent standard." The court felt, however, that a fee of $3 million to administer a fund of $600 million did not indicate waste, in view of the practice in the industry. As the court put it, "if the fund-management company format is to be legally questioned, such inquiry must come from some other place."

It would appear that the court felt that that inquiry should be made at the congressional level, because the mutual fund structure as provided in the Investment Company Act really fosters this kind of a result at the judicial level.

Without in any way questioning the quality of the performances of investment advisers, it is believed that any fair appraisal shows that a serious situation of conflict of interest exists that needs legislative correction. See also *Alleghany Corp.* v. *Kirby* 333 Fed. 327 (2d Cir. 1964).

What does the bill propose to correct the situation:

A. The definition of a person affiliated with the investment adviser is sharpened so as to exclude persons having strong ties with the adviser.

B. It repudiates the shell theory by imposing upon the unaffiliated directors the duty to request information and evaluate the reasonableness of the advisory fee; and imposes upon the investment adviser the correlative duty to furnish the information reasonably necessary for the directors to determine the reasonableness of the fee.

C. It supplants the standard permitting excessive fees unless they are regarded by a court to be shocking or unconscionable with a standard that the fees be reasonable. Some of the factors to be weighed in determining the reasonableness of advisers fees are: (*a*) the nature and extent of the services, including separate evaluations of advisory services and other services; (*b*) the quality of the service; and (*c*) the extent to which the fee schedule takes account of economies of scale.