

administered by the Commission. Indeed, this is the common law standard with which all fiduciaries are required to comply.

3. *Front-end load*.—I favor the elimination of front-end load plans as provided in section 16 of the bill. The Commission's analysis of the justification of this proposal is quite convincing. At the present time four leading commercial States prohibit the sale of contractual plans: California, my own State; Illinois, Ohio, and Wisconsin.

And I am sure that the committee has the evidence that California has 22 percent of the sales of mutual funds in the United States, and it is my recollection that it is the largest purchaser of mutual funds, which indicates that funds may be sold without having a contractual plan, and very successfully.

These States have adopted the policy now proposed in the amendment to the Investment Company Act because they feel that the contractual plans by and large are unfair to the small investor.

In California this is by an administrative ruling of the California corporate securities commissioner, which was adopted many, many years ago on the ground that a contractual plan was not fair, just, and equitable to the security holders, and while there were some efforts on part of the industry to get a change in that respect, neither the executive nor the legislature have yielded to this, and this is just not, you know, a question of debate in California today. It is regarded as settled. I refer the subcommittee to pages 15-16 of the SEC analysis of the bill. That was a reference to their report to the Senate, and similarly to the House subcommittee.

I have not in my statement said anything about sales commissions. I feel that the question of sales commissions is an economic question, and not a legal question, but I have reviewed the evidence that was presented before the Senate Banking and Currency Committee, and particularly the testimony of Prof. Paul Samuelson and Professor Wallich, who are eminent economists. I agree particularly with Professor Samuelson that we have in this industry, as the chairman indicated by some of the questions to one of the earlier witnesses, a case of imperfect competition where there is no competition at the retail sales level, because of congressional legislation in section 22(d) of the Investment Company Act; and that the most appropriate solution to restore the competitive situation in the industry would be to repeal that section.

Now the SEC takes a more modest proposal here, and that is that the sales commissions be cut from around 9 percent back to 5 percent. Professor Samuelson's testimony and other testimony indicates that the stock exchange commissions fixed by the stock exchange under supervision of the SEC is about 1 percent, and on an in-and-out transaction would be about 2 percent, so that the cost of selling mutual funds is nine times the cost of direct stock investment. As Professor Samuelson points out, it is quite obvious why a broker-dealer, when given the option of earning nine times or perhaps more than that, if it is just a purchase of direct stock, all other things being equal, and where the customer doesn't have a strong preference, would be inclined to recommend a mutual fund. I think this has generated the enormous growth of mutual funds, and it is very unhealthy from a competitive point of view. It really puts the broker-dealer in a difficult position, and in a position of conflict of interest.