

the promises of the bank. There is nothing at risk here so far as these investment advisory organizations are concerned, nothing at all. They don't guarantee any particular success or lack of failure or any level of asset value.

Now, turning to another point, we are accused of proposing to substitute our judgment for the judgment of the fund directors. This is wrong on at least two counts. In the first place, and I must emphasize it, any judgment as to the reasonableness of a particular fee would be made by the court, not by the SEC.

In the second place, if the directors really exercise a business judgment, if they do more than act as rubber stamps, if some of them change their views as to their responsibilities and do more than go through the rituals and feel that they do have an obligation to inquire and to seek justification, and they make a conscientious effort to arrive at a reasonable fee, taking into account all relevant factors, not only the ones we have mentioned but all relevant factors, and not merely rely on what the fellow down the street has been charging last year, I am certain, as I know all of you who have had any experience with the courts, whether as lawyers or as clients, must be, that the court would give appropriate weight to their judgment.

And as I mentioned, I believe I mentioned and if I haven't I should now, it would be appropriate for the legislative history so to indicate.

Now I come to another point that is somewhat related. It is a little more troublesome to me. It is in effect contended that we will engage in a sort of ratemaking by blackmail. I hope you will understand that I rather resent the suggestion. There is a suggestion made explicitly or sometimes implicitly that we will do something that we will of course not do. We will not require our opinions or the opinions of our staff about fees to be set forth in registration statements or prospectuses. We will not, we never have and we have been regulators and policemen for some 30-odd years now. We will not threaten suits unless we conclude that a suit is necessary to accomplish a statutory purpose, and that we have a case which we reasonably believe will persuade a Federal judge.

Now this raises an issue I want to repeat. We would, of course, conduct ourselves in all areas of our work by starting a lawsuit and asking questions later. The suggestion has been made somewhere that this is a coercive authority. Now obviously whenever you have some authority and responsibility to enforce the law, it is coercive in that sense. But we would think that where a reasonable question arose, that we would want to bring it to the attention of the parties involved, and discuss it with them, just as we do in many other areas, and frequently they persuade us that we have been misguided, that we haven't been fully informed, and that our point of view should not be as was first suggested.

This could happen. But we would not, and again I must reemphasize, this Commission has never, and never will in my opinion, engage in this sort of blackmail which has been suggested.

Now in addition to being worried about the Commission, the industry is also worried about the small investor suing. We don't think that the courthouse door should be closed to him or that bars such as the standards of corporate waste should be erected in his path. In fact, the sum