

(The statement referred to follows:)

SUPPLEMENTARY STATEMENT OF HON. MANUEL F. COHEN, CHAIRMAN,  
SECURITIES AND EXCHANGE COMMISSION

Mr. Chairman and members of the subcommittee, I deeply appreciate your affording me the opportunity to come before this Subcommittee for a second time to answer some of the objections that have been made to H.R. 9510 and 9511 and to clear up some of the misconceptions that may have arisen in the light of the testimony of certain representatives of the industry.

Over the past two weeks, I have carefully read the statements submitted to you by representatives of the securities business, as well as the transcripts of your questions and their answers on the points that have concerned you. I must confess that I found it a rather depressing experience because the industry has been so negative and unconstructive.

When I appeared before you two weeks ago, I told you that the purpose of these bills was a simple one—it was to provide a fair shake for the millions of Americans who have invested in mutual funds and other types of investment companies and for the additional millions who will invest in these media in the future. I want to reemphasize that basic purpose, because I think it is something we must not lose sight of.

The industry, however, insists that even if Congress should take the most modest steps to attain this goal, the health of the industry would be severely impaired. This is a familiar refrain heard in each of the hearings preceding the securities laws enacted by the Congress. In fact, these laws have served only to protect the securities industry itself from the consequences of overreaching by some engaged in that business.

There has not been a single advance in the regulation concerning securities which it was claimed would not have the effect of making business less profitable—or even impossible—for some segment of the industry. Some of you may recall the forecast that, if the Securities Act of 1933 were enacted, "grass would grow in Wall Street." Every improvement in the disclosure requirements has been made over the argument that it would make it impossible for some class of issuers to tap the public securities market. Every improvement in business standards has been made over the objection that it would be impossible for ordinary business men to operate under a crushing burden of government regulation. And after all these improvements, over all these objections, the securities business is bigger, stronger, healthier and more prosperous than it has ever been before.

The securities industry is a regulated industry. It has been regulated by the Federal government for more than a third of a century. The legislation before you is not an instance of government tampering with a free enterprise system. It is an adjustment of an existing regulatory statute to meet problems which were not present or even foreseen when that statute was enacted 27 years ago.

In many respects, these problems are attributable to the unforeseen consequences of Federal regulation. A great deal has been said in the last two weeks about competition in the securities business. The plain fact of the matter is that this business has a large number of competitors and very little competition. This may sound like a paradox but it is not. There are a great many separate units in the securities business, but they are severely restricted from competing with each other by the unique industry structure tolerated by and the anti-competitive protections afforded by Federal law.

In fact, the mutual fund industry does not compete on the basis of price for investor favor. There is little effort to offer a better price to the investor. The primary effort is to offer a better deal to the dealer and the salesman, so that they will push the shares of a particular fund to investors who have no effective way of evaluating different funds or of determining whether mutual funds are an appropriate investment for them at all.

This type of competition bears no relation to the classical free enterprise system. It is a "perverse" or "upside down" competition, which can exist only because the present scheme of Federal regulation of this industry makes it possible. It is a system of competition which brings enormous benefits to the industry, but not price benefits to the investor. It is a system under which the Federal government authorizes the industry to operate outside of the controls of the anti-trust laws, outside the controls provided by disclosure of compensation for management services, and outside the controls provided by a competitive free