

be given to any proposals submitted by the industry. Thus far, the industry has presented nothing except proposals that would serve to further insulate the advisory fees from judicial scrutiny. While it complains, for example, about the vagueness of the standards that we have recommended as appropriate for determining reasonableness of fees, it has made no suggestion as to changes in the standards made which would assist it in this apparent quest for greater certainty. The industry appears to be interested only in the kind of certainty that would flow from the absolute control over the level of the fees that it now has. It fails to recognize that mutual funds are affected with an important public interest which requires at the very least effective enforcement of the usual standards of fiduciary duty. Here corporate managers are dealing with the entities they control under conditions which involve serious conflicts of interest and marked differences in bargaining power between amateur investors and professional advisers who control billions of dollars of public capital in a few hands. We submit that the public interest requires this legislation.

II. WHAT OF THE EFFECT OF SALES LOADS REDUCTION ON SELLERS OF MUTUAL FUND SHARE?

During the hearings, much has been said about the adverse effect that the sales load provisions of H.R. 9510 and 9511 would have on those who sell mutual funds. The extent of this adverse effect has, we believe, been exaggerated. A decrease in gross revenue, if it occurs, may lower the income of at least some of the people who sell the item in question. Of course, this is based on the assumption that lower sales charges will not make fund shares more attractive and thereby stimulate sales. Upon this assumption, enactment of the bill would lower the earnings of many mutual fund sellers and may cause some of them to leave the business.

Now it is never pleasant to recommend a course of action that will make life for some people less comfortable. Nevertheless the Commission, after years of careful consideration, unanimously concluded that, if the price maintenance scheme in the statute—which has had the effect of raising costs—is to be continued, substantial reductions in mutual fund sales charges would be in the public interest and that legislative action to achieve that objective is needed.

If the mutual fund sales charges that now prevail were free market prices determined by the normal interaction of supply and demand, it might not be necessary to recommend the imposition of a statutory ceiling. But mutual fund sales charges are *not* free market prices. They are prices fixed and maintained by the fund managers under an exemption from the antitrust laws. That exemption—Section 22(d) of the Investment Company Act—permits the funds' principal underwriters to fix prices to which every retail dealer that sells these shares must adhere. No dealer anywhere (not even a dealer who has no contract or contact with the principal underwriter and who obtains shares from other sources, including investors) can deviate from the price that the principal underwriter has set. Since each principal underwriter seeks to induce dealers and salesmen both to sell mutual fund shares rather than other securities and to sell the shares of its fund or funds in preference to those marketed by competing principal underwriters, there is a constant upward pressure on sales loads. The strenuous opposition of almost every segment of the securities industry to the very thought of free retail price competition in the mutual fund business is based upon the assumption that the prices now paid by mutual fund buyers are far higher than the prices that would prevail in a free, competitive market.

It seems strange to some that, by and large, these high purchase costs to buyers have not resulted in high incomes for retail sellers. There is, however, a fairly simple explanation.

Selling mutual funds is an easy occupation to enter. Almost anyone not found guilty of a serious crime can become a mutual fund salesman. And since fund salesmen are, with rare exceptions, compensated on a pure commission basis, another salesman adds little to the employer's costs. Any sales that the new salesman makes (no matter how few or small) produce income for the employer. It is a case of the more, the merrier. There is a typical pattern. Each new salesman makes—or tries to make—sales to his friends and relatives. Carrying his selling efforts beyond that is more difficult. Prospects aren't that numerous because the ratio of salesmen to prospective investors is so high. In this connection, I might point out that Mr. Cornelius Roach of Waddell & Reed, Inc., estimated before