

What I have thus far said suggests, I know, that section 22(d) should be repealed and that mutual fund sales charges should be determined by market forces just as other prices are. There is much to be said for that suggestion, as Professor Wallich pointed out to this Committee. If we had to choose between things as they are and deleting Section 22(d), which would produce greater price competition than now exists, the Commission would seriously consider that as a step to deal with the present situation. Free competition would be an improvement over what we now have. And there are ways of equalizing the situation of the independent dealer distributed funds with those who employ captive sales forces. But that is not the only choice. There is another possibility which we included in the memorandum of alternatives provided to you which may be, from the industry's point of view, less drastic and which we, on balance, deem preferable to an all-out competitive regime. That alternative is to amend Section 22(d) to permit price maintenance up to, but only up to, 5%. We considered all of these, and while we were not persuaded that the industry's fears were warranted, we recommended the approach found in section 15 of the bill. Under the bill resale price maintenance would be preserved and the industry would continue to be sheltered from competitive pressures at the retail level, but mutual fund sales charges would be subject to a 5% ceiling with discretionary power in the Commission to permit sales charges of more than 5% in appropriate cases.

We think this approach somewhat preferable to price competition for a number of reasons. One is based on the view of some that independent broker-dealers and their salesmen would in all probability fare better under a 5% ceiling than they would under all-out competition. Those who hold this view urge that deleting Section 22(d) would produce real competition which might give captive sales organizations an advantage over independent dealers. It does seem a bit unrealistic to expect retail price competition to do much to bring down the price of those mutual fund shares which are sold only by a single exclusive retail distributor, at least immediately. Although this captive problem could be dealt with—for example, the law could require every principal underwriter to make the shares of its funds available to every registered broker-dealer who wanted to sell them—the Commission decided not to recommend any step that might tend to give large, captive selling organizations even a temporary advantage over their smaller, independent competitors. Also, it is impossible to predict just how much downward pressure retail price competition would put on mutual fund sales charges. While I am not persuaded that such would be the case, the industry has told us that market forces might drive the normal sales load far below 5%. If this occurred, competition would have a far more marked impact on the small retail dealer and on that dealer's salesmen than the Commission's present proposals could possibly produce.

In passing, I might observe that these considerations, to which the Commission gave much weight in its deliberations, ought to demonstrate that the S.E.C. is concerned about the small man in the securities business.

Moreover, there is, as the Commission has noted in its report on the Public Policy Implications of Investment Company Growth and its previous statements to this Committee, a second reason for the regulatory—as distinguished from the purely competitive—approach.

Competition will undoubtedly do a lot for the knowledgeable, sophisticated, price-conscious investor. But what would it do for the widow who has never heard of the *Wall Street Journal*? Most people, not just widows, are not highly sophisticated in securities matters. They rely on the recommendations of securities salesmen who hold themselves out to have a special knowledge and wisdom in this complicated and risk-exposed business of equity investment. Comparison shopping is difficult for persons without all the tools of analysis at their command. Hence free price competition in the sale of mutual funds might well not achieve the desired result.

So at least it seems to us. But we have never denied that the question of competition versus regulation is an exceedingly close one. Perhaps it would be better to permit sales charges to be set in a free market than to set them by law. Our considerations led us to recommend a limited degree of regulation. Indeed, there may be other and more desirable forms of regulation. (One suggestion has been that the appropriate self-regulatory institution should attempt to deal with the problem in the first instance with adequate review and residual authority in the Commission. In this latter connection, I sent you a copy of an opinion of the Department of Justice which was provided at the request of Senator Ben-