

shareholders do not pass on the contracts that a commercial corporation makes with anyone, no matter how big it is, that is not normal corporate practice, but the courts said this is unusual, this is unique. You have got situations here that do not exist in the normal corporate setup. We are trying to restore the statute to what the Congress intended to achieve in 1940.

Mr. KEITH. My point was that in 1940 the shareholders did not have that protection because of this built-in conflict. We thought that there should be unaffiliated directors.

Mr. COHEN. Precisely.

Mr. KEITH. You maintain it hasn't worked as well?

Mr. COHEN. You put it very well, Mr. Keith. Because of those provisions the Congress put in to protect the investor, it has worked out in a way to his detriment.

Mr. KEITH. On balance, I am not sure I agree with you. On balance the funds have been well managed—they have done well—and people have chosen this vehicle as an investment.

Mr. COHEN. Mr. Keith, they have done well. There is no question about that. Very few people have not done well in these rising markets, and you have had testimony before you by very prominent economists who raise some serious questions as to the value of the investment management. We are not questioning that. We are saying they are entitled to a fee. The only thing we are saying is, it should be a reasonable fee. Let me answer your question, though.

Mr. KEITH. All right, if you would. The question I really want to ask is this: Is there any end result that would accrue by reason of the enactment of your recommendations that would cause these funds to move to an internally managed operation, getting the apparent benefits of size, that, for example, Massachusetts Investment Trust gets?

Mr. COHEN. Mr. Keith, I am glad you put it that way. There is nothing in the bill to prevent it, and when I was here before I made a special point to urge upon the committee that in marking up a bill, it not do anything which would prevent that possibility, that possible mutualization, that possible internalization, so that they would operate in the way a normal corporation is operated, or by means of a service corporation owned by the funds. I agree with that 100 percent, and I think we all must be sure that that would not happen. I think Mr. Loomis has something to add to that.

Mr. LOOMIS. I agree with all that, but I wouldn't want the record to appear that our bill is going to require them to internalize—because I don't think it will—that will be a choice that they will have to make.

Mr. COHEN. As a matter of fact, we abandoned that choice even though it was an attractive one, and settled on what I considered to be the most conservative, the most modest proposal possible.

Mr. MOSS. Mr. Stuckey, you have some questions now?

Mr. STUCKEY. Thank you, Mr. Chairman.

Let's go back to management. You stated in your memorandum that the dollar cost to the individual for management fees is relatively small and has little impact upon his investment decision. If this is so, why does he need protection against excessive management fees? And what do you mean by "relatively small"? That is, relative to what?