Company Act of 1940, under which the investment company industry is already subject to a substantial degree of regulation. The Department suggests, however, that in addition to the proposed limitation on sales loads, the Congress consider modifying the resale price maintenance provisions of Section 22(d) of the Act, either by repealing that section altogether or by amending it to provide that no sales could be made "at a price higher than the current public offering price." The Department notes that the principal objections that have been made to the proposals for repeal of Section 22(d) are that it would enable knowledgeable investors to purchase mutual fund shares at lower prices than unsophisticated investors, and that it might give "captive sales forces" an undue advantage over independent dealers in selling fund shares. These objections, of course, were fully exposed before your Subcommittee in our statement, and were among the reasons why the Commission recommended the 5 percent limitation rather than the repeal of Section 22(d).

We believe, of course, that retail price competition can result in great benefits to consumers in the mutual fund area, as it has in so many other areas. While we have not recommended the repeal or substantial modification of Section 22(d), therefore, we concur in the suggestion of the Department of Justice that the Congress give careful consideration to this proposal in conjunction with our proposal for a 5 percent limitation, in view of the very different situation which exists in the industry today as compared with the situation which existed when the Investment Company Act was adopted in 1940.

With respect to advisory fees, the Department of Justice suggests that the Congress consider vesting in the Commission, rather than the courts, the authority to determine the reasonableness of management fees, or in the alternative requiring the Commission to report to the courts on the merits of any private lawsuit instituted under the standard of reasonableness.

Our suggestion to vest this authority in the courts, rather than in the Commission, reflected our confidence in the ability of the courts to adjudicate this type of question, which Judge Friendly made clear in his testimony before your Subcommittee. We also wished to make clear that the Commission was not seeking any kind of "rate-making authority" in this area.

The suggestions of the Department of Justice are designed to assure consistency of regulation and to avoid proliferation of court action. We recognized the importance of both of these objectives in our statement and in our legislative proposal, which specified certain factors to be taken into account in determining whether a particular fee is reasonable, and which provides for Commission intervention as a matter of right in private suits to enforce the standard of reasonableness. As Judge Friendly noted in his statement, there is a spectrum of alternative techniques for achieving these objectives, including those suggested by the Department of Justice. While we have not sought authority for the Commission to determine the reasonableness of advisory fees or a requirement that the Commission submit a report to the court in all cases, we would of course undertake the responsibility if the Congress decided that either of these modifications in our proposal is desirable.

5. Mr. Ronald Lyman testified regarding the difficulties he would have under the bill in getting non-affiliated directors. This argument was not advanced by Loomis-Sayles Mutual Fund, Incorporation ("Loomis-Sayles") in the application it filed for a Commission order enabling it to continue operating with a Board of Directors more than 60 percentum of whose members are affiliated with its investment adviser. As a no-load fund, Loomis Sayles has not been required to have such a Board of Directors and the company felt it should not change its Board simply because it proposed to sell its shares at a sales load overseas.

Mr. Lyman testified that no-load mutual funds would be hard put to find enough willing and qualified persons to serve as non-affiliated or disinterested directors because of the sharply increased responsibility and risk imposed on them by the bill. He stated that it is likely that many individuals who might now be willing to serve as non-affiliated or disinterested directors would be unwilling to do so under the new law.

In contrast, the application filed by Loomis-Sayles did not refer to this matter. Loomis-Sayles stated that unless it received an exemption under the Investment Company Act, it would be necessary to either increase the size of