

probably suffer substantial financial loss or other damage or that the interests of its shareholders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and (2) that such violation or practice or breach of fiduciary duty is one that involves personal dishonesty on the part of such director, officer or person or will operate as a fraud upon the company or its shareholders."

D. Affiliation of fund officers

For some purposes such as voting on advisory and underwriting contracts, according to some arguments, it is claimed that an officer (President) and director of a Fund who is *completely unaffiliated with the adviser or underwriter* must be considered the same as a director *affiliated* with the adviser and underwriter because he is an officer of the Fund and that the President of the Fund is prohibited from voting on the advisory and distribution contracts. If such construction is correct it is wrong in principle because the President is probably the most knowledgeable person on the subject. We consider that if the president or officer of the fund company has *no affiliation* with the adviser or underwriter he should be permitted to vote on such vital matters as advisory and underwriting contracts. It is not logical to place independent directors in the same boat with nonindependent directors and disqualify the independent directors the same as the non-independent directors when the independent directors have absolutely no conflict of interest. The statute should be based on a distinction made between (1) persons affiliated with the *Fund*, and (2) persons affiliated with the *adviser or underwriter*. This could be accomplished in one respect by amending Sec. 15(c) of the Act to read as follows:

"* * * (1) by a majority of the directors who are not parties to such contract or agreement or affiliated persons of any such *adviser or underwriter*, or (2) etc."

E. Fund holding companies

The proposal designed to restrict Fund Housing Companies from investing in shares of other funds (See 12(d)(1)) would prevent IDS (a registered investment company) from investing for its pension and retirement plan in shares of funds managed by it. We suggest that a *statutory exemption* allowing such transactions be added to any amendment on this subject.

F. Interested persons

The proposed Section (19) defining "Interested Person" in (A) (iii) and (B) (iv) has a three year retroactive provision with respect to any person who has had any "direct or indirect material business or professional relationship with such investment adviser". The agreement between the SEC and the ICI Task Force also applies to certain persons in such capacities who have been within that classification within the past two fiscal years of the company. Such *ex post facto* application of the law is too broad and is also unfair. *It would seem to be sufficient if such provisions were restricted to persons who have any such prohibited relationship following the enactment of the bill.*

Also, the definition of "member of the immediate family" seems too broad—to the extent it includes persons who are *not* members of the immediate family. Including "brothers and sisters" is clearly too broad and it is submitted that on children the bill should be limited to those children who are in *locus parentis*. Why should any person be penalized for conduct of persons who are beyond their control and from whom they have no right to obtain information? It would be sufficient if the SEC after notice and hearing could decree such persons to be interested.

As the bill states that common directorship does not give rise to interested person category, *we suggest that common "officers" should be placed in the same category or that the bill be amended to provide exceptions from interested person classification for persons who "by reason of being a common director or officer of any other investment company having the same investment adviser or principal underwriter."* (Amend. (A))

G. Deferred effectiveness of management fee legislation

We submit that a two year period would be necessary to adjust management contracts to the requirements of this legislation—rather than one year.

H. Adviser furnishing information to funds

The proposal to amend Section 15 (C) (lines 15-21) to require advisers and underwriters to furnish certain information which the Funds need in negotiating