

what Metternich said about "non-intervention," i.e. that "non-intervention was a political and military term that meant the same thing as *intervention*." Thus some of the proponents (Mr. Haack) are using the term "self-regulation" when what they actually refer to is "*self-regulation that may be not self-regulation*," since it is *outside* regulation by the SEC in the last analysis, with the SEC having authority to abrogate the "self-regulation" of the industry. Thus, this confusion of terms exists. The dialogue on this point has been referring to different things without precise definition. One is talking about pure industry self-regulation and the other is talking about giving the SEC an absolute right to abrogate the self-regulation of the industry. These are exact opposites.

It is our view that self-regulation which confers power on the SEC to override industry self-regulation would be very hazardous and unwise in view of the already expressed opinion of the SEC in favor of the cut to 5% which they presently propose. With the SEC holding such views, the mutual fund industry could look forward eventually to having the SEC carry out their 5% proposal. For reasons previously stated with respect to the SEC's proposal to cut the sales charge to 5%, we consider that same would not be in the best interests of fund shareholders whether it was brought about directly by legislation or indirectly by the SEC through mis-called "self-regulation."

We also consider it inadvisable to have the sales charges of the mutual fund industry controlled in the first instance by what are essentially stock brokers oriented to Stock Exchange firms. Their basic business is so different and foreign to the sale of mutual fund shares in the form of direct sales and by contractual plans that the two should not be mixed.

That the NASD style of so-called "self-regulation" is not true *self-regulation* is readily apparent from the following provision of NASD provision in the Securities Exchange Act of 1934.

"Sec. 15A. (k) (1) *The Commission is authorized by order to abrogate any rule of a registered securities association, if after appropriate notice and opportunity for hearing, it appears to the Commission that such abrogation is necessary or appropriate to assure fair dealing by the members of such association, to assure a fair representation of its members in the administration of its affairs or otherwise to protect investors or effectuate the purpose of this title.*"

The leverage of such power can be used to accomplish such SEC objectives as a 5% sales charge, even if the industry's "self-regulation" did not so provide in the first instance.

CONCLUSION

The basic question that is presented to Congress by the SEC proposals in H.R. 9510 is whether the proposed radical changes in the mutual fund business are warranted by any facts disclosed in the SEC Report to Congress and the testimony before the Committee. The very drastic and revolutionary changes proposed should certainly not result from presumptions and mere expressions of personal opinions, and especially in the area of mutual funds, which by the wording of the same Report have been operated in an honest and proper manner to the benefit of millions of investors. The SEC Report states, *inter alia*:

(P. VIII)—"** * * on the whole investment companies have been diligently managed by competent persons and that the general record of the industry is one of which it can be justly proud.*"

(P. 1)—"*In this report the Commission finds that on the whole the investment company industry reflects diligent management by competent persons.*"

(P. 1)—"*Under the guidelines established by the Act the investment company industry has acted responsibly to provide a useful and desirable means for investors to obtain diversification of investment risks and professional investment management.*"

(P. 71)—"*The investment company industry has attracted many men of high professional competence and integrity because of their efforts and because of the salutary provisions of the Act serious abuses in transactions between investment companies and their affiliated persons have been reduced to a minimum.*"

It is submitted that there is nothing in all the present studies and reports that justifies such violent changes as are proposed in H.R. 9510-9511.

The wide public satisfaction with the mutual fund industry, as evidenced by its continued growth with full disclosure, does not indicate that the public is complaining. At the Senate hearings Senators stated that they had received no demands for such drastic legislation and members of the House of Representa-