

figure to existing operations. But surely if lower aggregate revenues are reasonably to be anticipated, prudent firms would seek to enhance the efficiency of their procedures. The study does not consider, for example, whether an excessive number of persons are engaged in heavy selling of mutual funds, or whether sales efforts are scattered over marginal prospects.

(B) The study also assumes that the level of commissions for other types of securities business will remain unchanged. In fact, the commission rate structure, at least for New York Stock Exchange transactions, may well be altered upward. In all events, one cannot assume for the indefinite future that the commissions for each type of securities business will continue at present levels.

(C) Assuming *arguendo* that some firms will suffer from a lowered rate, the real question is whether mutual fund purchasers should be called upon to underwrite inefficient firms, excessive sales efforts, or unduly low commissions (if such is the case) on other forms of business. I find it difficult to believe that the typically small investor who buys mutual funds should have to furnish a subsidy of this sort.

(D) The 1940 Act, by its somewhat limited regulation of mutual fund sales charges, necessarily impaired the profit-making potential of some firms selling mutual fund shares. Evidence presented at the time to the Senate showed that sales loads had ranged as high as 20%, and that front-end load charges for the first year had exceeded the 50% figure allowed by the 1940 Act. Thus, Congress has already exhibited willingness to balance the interests of investors in mutual funds against the interest of sales organizations in securing as high a level of charges as possible, and to extend protection of investors even at some cost to the profit-making potential of the sellers.

(d) It has been suggested that since load funds to give a quantity discount (unlike stock exchange commissions), this accords the fund investor a "break" not available to purchasers of exchange-listed shares. This contention is hardly relevant, since the "breakpoint" for a reduced sales load comes only at high purchase levels, even when it is available for a contract with purchases spaced out over a period of years. Thus, the SEC Report indicates that the first breakpoint for many funds occurs at an investment of \$12,500 (when the load drops from 8.5% to 7.5%).¹⁰ Since most mutual fund purchasers are small investors, it is doubtful that many receive the benefit of even this relatively small reduction in sales load. In all events, prime consideration should be given to aiding the small investor in seeing that a greater proportion of his funds actually go to work for him with the fund rather than into a sales commission which produces nothing for him.

(e) It is suggested that no comparison with a stock exchange commission is valid because the mutual fund purchaser acquires, not a security in the usual sense of the word, but a type of "service". Sometimes, comparisons, highly favorable to the mutual fund, are made to show how large an aggregate commission the investor would have to pay if he were to attempt to duplicate this "service" by buying a small number of shares of many stocks. Granting that the purchaser does indeed receive a significant "service" through a mutual fund, the conclusion—that sales loads should not be disturbed—does not follow. First, the mutual fund purchaser pays each year for that "service" through the fund expenses deducted from the fund's gross income for advisory or administrative fees, annual reports, prospectuses, and so forth. Thus, he pays an annual fee for this service. The sales load does not compensate for any service performed by the fund; its function is simply to provide a profit—the amount of which is, of course, disputed—for the sales organization. This is demonstrated by the fact that closed-end companies and no-load funds similarly provide an investment "service" paid for through deductions from the fund's gross income. The argument from the fund's "service" functions, as applied to sales loads, is so far off base as to be, in my judgment, misleading.

3. *Alternative 1: Repealing Resale Price Maintenance Provision of the 1940 Act.*—A possible alternative is to place no ceiling on sales load but repeal Section 22(d) of the 1940 Act precluding dealers from selling mutual fund shares except at the price determined by the underwriter. This provision has, of course, precluded price competition among funds and their salesmen to attract customers by giving price reductions out of the commission. Indeed, it has generated a different sort of competition with an upward thrust to prices, for it induces funds

¹⁰ SEC Report at p. 210.