

to raise sales loads in order to stimulate brokers to maximize their efforts to sell the fund's shares.

Although I quite frankly do not like legally authorized resale price maintenance by any industry—and I speak on this from my own experience as a former attorney in the Department of Justice's Antitrust Division and from teaching antitrust—I am reluctantly led to believe that this alternative would no be preferable to a ceiling on sales loads. Like it or not, resale price maintenance is a fundamental part of the securities industry, and of the investment company business in particular. Repeal of this provision might have undesirable repercussions not readily determinable at this time. It might prompt defensive measures among investment companies seeking to preserve the status quo and thereby create complex and difficult antitrust problems.

Moreover, repealing Section 22(d) would not apparently affect the price levels charged by some mutual funds selling shares through their own sales organizations (the so-called "captive" sales force) rather than through broker-dealer channels. Even if price resale maintenance were outlawed, this would not preclude such funds from setting the prices at which their own employees could sell the shares. Indeed, there may be some disturbing side-effects. For instance, if such funds could continue to charge comparatively high loads, this would lure salesmen away from broker-dealers into "captive" sales forces; and if loads could be thus stabilized, other funds, currently selling through broker-dealers, might shift to internal sales organizations. Thus, a long-range effect could be diversion of business away from smaller broker-dealers who are said to depend on mutual fund sales, to funds with internal sales organizations. I doubt any major competitive impact of sales-load price-cutting by broker-dealers seeking to keep or attract business away from funds with internal sales organizations. True, a lower sales load offered by a broker-dealer would be a good talking point to a customer. However, it is at least doubtful that mutual fund prospects would do much shopping around, especially to look for lower sales loads; after all, they have not done so in the existing situation where no-load funds can be obtained.

In sum, I doubt that repeal of Section 22(d) standing alone would quickly, and perhaps not at all, bring mutual fund customers the supposed advantages of competition among salesmen. The benefits of repeal seem to me too conjectural to make such a move a predictably effective means of redressing the problems of excessive sales charges.

4. *Alternative 2.*—One variant of the first alternative is to repeal Section 22(d) and require that each fund make its shares available to all broker-dealer members of the NASD at the net asset value of the shares plus a reasonable underwriters' spread. If this became law, broker-dealers could obtain mutual fund shares at "wholesale" prices and then retail them at prices determined by competition among themselves. This does, indeed, have much to commend it. However, it also creates problems. First, it would require repeal of Section 22(d) and resale price maintenance, and to that extent alters established marketing patterns in the industry. Secondly, it would compel substantial changes in methods for those funds utilizing their own internal sales organizations; for they, too, would presumably have to sell "wholesale" to broker-dealers who would (and should) be free to compete with the fund's own salesmen. Thirdly, it would be necessary for some body (presumably the NASD) to determine what is a reasonable spread properly charged by the fund to broker-dealers selling fund shares.

While this alternative seems attractive, I think that its hoped-for benefits may outweigh its difficulties. Besides requiring all funds to give up traditional resale price maintenance, it would compel funds with "captive" sales forces to change their methods of doing business and in effect establish competition with themselves.

On balance, I believe these two alternatives are less attractive than setting a maximum sales load of 5%, which is a remedy addressed to the specific problem of excessive sales charges. In particular, I think that the approach suggested by the SEC is ultimately a more conservative one than alternatives which would precipitate changes in industry structure and established marketing methods.

5. *Alternative 3: NASD Regulation.*—I have some difficulty in determining the feasibility of this alternative, as I know of the proposal only from brief newspaper reports. I understand that the standard would be framed in terms of "reasonableness." Presumably, this would require the NASD to formulate more definite content to such a standard by rule-making. To the extent that the NASD might come forward with a 5% or 6% figure, the result would presumably differ