

"What have we done with respect to management contracts? *There is not a single provision in section 15 which even remotely assumes to fix what they should be paid as compensation.*

"As a matter of fact, in Senator Taft's State the "blue sky" laws were recently amended, and they have a provision that investment company securities could not be sold in that State if the management and operating expenses exceeded 1½ percent of the average total assets.

"We do not have that. *We feel that is a question for the stockholders to decide. If they want to pay a man a million dollars to manage the fund and if they know they are paying him a million dollars and if they have the right to approve the payment of a million dollars, this bill says that is perfectly all right.*" (Emphasis supplied.)

Investment Trusts and Investment Companies, Hearings, Senate Banking and Currency Committee, on S. 3580, 76th Congress, April 9, 1940, page 252.

We, of course, do not claim that this testimony disposes of any of the issues before the subcommittee. We do feel that it does make it clear, contrary to SEO assertions, that the Congress is now dealing with proposed new and novel legislation and not with a reform or extension of existing law. We also believe that this testimony makes clear what Congress "intended to achieve in 1940" with respect to management fees—namely, full disclosure and the right of shareholders to decide for themselves within the framework of the traditional modes of corporate democracy.

Moreover, the joint legal opinion of Gaston, Snow, Motley & Holt and of Sullivan and Cromwell, which has been submitted for the record, demonstrates that Chairman Cohen incorrectly implies (e.g. Hearings, pp. 47, 55) that the 1940 Act reduces the legal protections of shareholders which were previously available.

Sincerely yours,

ROBERT L. AUGENBLICK,
President and General Counsel.

INVESTMENT COMPANY INSTITUTE,
New York, N.Y., November 6, 1967.

HON. G. ROBERT WATKINS,
House of Representatives,
1015 Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN WATKINS: In response to your letter of November 3, 1967, asking us a number of questions with respect to testimony on H.R. 9510 and 9511 before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, we respectfully submit the following:

Question No. 1. Throughout Chairman Cohen's testimony there were references to "conflicts of interests" between the adviser and the fund and perhaps as it applied to an individual director of the fund who was also connected with the adviser.

(a) Are these "conflicts of interest" unusual in corporations generally?

Answer. Possible conflicts of interest are normal and prevalent in almost all corporations and are regulated by law and good corporate practice. The possible conflicts may be of many types and degree. They may exist, for instance, when a board of directors votes on the compensation of officers who are also directors. They can arise when directors or officers have any type of personal dealings with their corporation or have any interest in other corporations which have transactions with their corporation. The manner in which the courts deal with conflicts of interest involving transactions between corporations and directors having an interest in the transaction is dealt with in the joint opinion of Gaston, Snow, Motley & Holt, and Sullivan & Cromwell, dated October 23, 1967, which has been supplied by us for the record. It is attached to this letter as Exhibit "A" in the event it is not otherwise in the record.

Question No. 1(b). Are they different in the mutual fund industry from those found in other corporations?

Answer. The potential conflicts of interest which exist in the mutual fund industry, namely, that some of the directors of the fund usually have an interest in the management company, are no different in principle from those that are common in other corporations.

Question No. 1(c). Is the corporate law that applies to these "conflicts of interest" different from that which applies to corporations generally?