

Chairman Cohen subsequently corrected his statement. The resolution passed by the State administrators on September 14, 1967, was to the opposite effect as follows:

Whereas the Securities Administrators of many of the states of the United States have and for many years have had ample authority under the laws of the states in which they serve to regulate and supervise the terms of securities and the fairness of the public offering and sale of securities and,

Whereas such Securities Administrators have effectively exercised such authority as, in their judgment, has been for and in the best interest of persons residing in such states and,

Whereas there is no evidence indicating any need or public demand for fundamental change in the existing regulatory and supervisory structure and,

Whereas legislation is pending from time to time before the Congress of the United States which if enacted will severely limit such state supervisory and regulatory authority: Now, therefore, be it

Resolved, That this Association does hereby record its deepest concern as to the enactment by Congress of any legislation which would further limit the authority of state Securities Administrators under state laws to regulate and supervise the terms of securities and the terms of the public offering and sale of such securities; and, be it further

Resolved, That the Secretary of this Association be and he hereby is authorized and directed to transmit to the appropriate Congressional Committees duly certified copies of these Preambles and Resolutions.

Question No. 8. Chairman Cohen indicated several times in his testimony that the provisions for approval of investment advisory contracts by stockholders and by the unaffiliated directors which were included in the Investment Company Act of 1940 for the protection of the stockholders have operated as a shield for the investment adviser which did not exist before the 1940 Act. Did these provisions change the existing law so as to reduce the protections available to stockholders of corporations generally and put the investment company stockholders in a worse position?

Answer. No. It is not true that the requirements of the 1940 Act put the stockholders of an investment company in a different position from other corporate stockholders. There was nothing in the law prior to the Act which in any way precluded approval of an investment advisory contract by disinterested directors or by stockholders, as shown in the attached opinion of Gaston, Snow, Motley & Holt, and Sullivan & Cromwell.

Question No. 9. The SEC entered an exhibit into the record which pertains to certain mutual fund advisers who have entered into arrangements with sub-advisers. It is claimed that because these sub-advisory agreements are at lower rates of payment than most conventional investment advisory arrangements, that this indicates that the rates charged under the conventional contracts are too high. Do you have any additional information with regard to these sub-advisory agreements, and would you comment on this claim?

Answer. During the hearings the SEC ought to place importance on the unique arrangements that some eighteen mutual fund organizations have with so-called sub-advisers. Even the limited research that we have able to conduct in the last two weeks demonstrates that these arrangements shed no light on any of the issues underlying H.R. 9510 and H.R. 9511. The facts are:

1. All of these eighteen funds included in the SEC exhibit are very small—only two exceed \$40 million. Thirteen of these were in the \$10 million range in assets, with nine of these at less than \$4 million. As far as we can determine, two of the companies on the SEC list had no assets as of June 30, 1967.

2. We have been able to contact thirteen of the investment adviser organizations on the SEC list. Ten of these thirteen investment advisers report that they have recently or are now operating at a loss—even though, as the SEC claims, they apparently incur only modest costs in procuring investment advice from the sub-advisers.

3. The important fact about these investment advisers is that the sub-advisory contracts do not encompass the full range of management services provided by the investment adviser to the fund. In some cases the sub-advisory agreement did not even cover all investment advice. Thus, while the services being provided by each sub-adviser differ from arrangement to arrangement, they are not all-encompassing and are used to *assist* the adviser in carrying out his function.

Question No. 10. "Some witnesses have raised questions about Section 22(d) of the Investment Company Act which in effect 'fair trades' mutual fund shares