

and I think their suggestions are appropriate if the requirement is not to be completely devoid of meaning; but I am very dubious that this change will carry us very far toward solving the problem. As long as the organization of the fund, and the choice of directors, is in the hands of the individuals associated with external investment adviser, it will be difficult to transform the directors into a group capable of bargaining effectively on management fee rates. A move in that direction may be desirable, but its inherent limits should be obvious.

(4) A fourth possibility is an extension of disclosure requirements. This is the traditional emphasis of the securities legislation, and a valuable one, but I think its capabilities have been seriously over-rated. It even shows some potential for becoming a reflex substitute for more effective, but also more controversial, actions. This avenue is limited in the mutual fund area by the importance of salesmanship—and the salesman's pitch is beyond effective control. It is also limited by the possibility of over-saturation of disclosure to a point where its value to the buyer declines absolutely. Furthermore, the most important kind of disclosure, a clear indication of the price and quality of alternatives, is extremely difficult to present briefly and equitably. Thus, while more and especially better disclosure is unobjectionable, I have doubts as to its serviceability as the central element in establishing reasonable management fees.

(5) Finally, we may establish a standard of reasonableness of fee rates, stipulating the relevant criteria (including performance)² in general terms, and leaving the detailed elaboration of these norms to the administrative and judicial process. This is essentially the SEC proposal. It is, if anything, unduly conservative, accepting the industry's structure in its existing form, and surrounding the application of the standard of reasonableness with statutes of limitations on suits and other protections of the fund and its directors that seem a bit excessive. Nevertheless, I would favor this proposal as a minimum in an area where something should be done and where more drastic actions designed to increase competition are not likely to be very effective.

III. THE SALES CHARGE

The case for limiting the size of the charge that can be levied in the sales of mutual fund shares rests on the fact that the market for fund shares is competitive only in a limited and somewhat perverse way. Competition is restricted, first, by the Act's section 22(d) provision for resale price maintenance. This is a significant restraint on price competition, and one that is desired by the industry. A second limitation on competition stems from the uninformed nature of the small investor market that has been heavily tapped by the fund industry. As noted earlier, this has tended to encourage salesmanship and to reduce further any possible price competition at the retail level. The price competition that still remains involves mainly a bidding by issuers of fund shares for dealers to carry and push their wares. Given this direction of competition, market penetration is increased by *elevating* the sales charge (or the dealer's percentage of the charge) at the expense of the ultimate purchasers of shares. This is perverse or upside-down price competition.

This peculiar type of competition results from the fact that, since a large fraction of fund shares purchasers are uninformed on the complexities of stocks and investor options, they have to be "sold" their shares, they don't just buy them. They do not have a base of comparative knowledge that would permit them to evaluate a salesman's pitch. The Prospectus that they are given is tedious and lacking in comparative information that would render these details meaningful. Thus, from the standpoint of the fund, selling shares is mainly a question of getting salesmen to push them; that is, increasing the dealers' take from the gross sale price. The truth of these contentions is demonstrated by the fact that, in the *Study of Mutual Funds* it was found that sales of fund shares were much

² Although a performance basis for establishing management fee rates has considerable appeal, it is not easy to convert a complex variable like performance into a usable general standard. The variety of possible formulas (number of years considered relevant, adjustments for differences in fund objectives, etc.) would make an informed evaluation of management fee rates by investors even less feasible than at present. And if the formulas were so arranged as to provide at least *some* compensation even for atrocious performance, as is likely, performance standards are likely to work out as a "heads I win, tails you lose" proposition (as the SEC has suggested). In the light of these considerations, I suspect that a general application of a performance standard would turn out to be a source of further abuse.

more closely and positively related to the size of the sales charge than the investment performance of the fund. This indicates an irrational element in the market, based on buyer ignorance and its exploitation by salesmanship. This is what has led to an upside-down competition.

It should be pointed out that buyers of fund shares have not generally been damaged as a result of their investments. On the contrary, many of them have done quite nicely. In principle, however, it seems unwise from the standpoint of both stability and equity to encourage large numbers of relatively uninformed small investors into a risky investment medium on the basis of intensive person-to-person selling. It has been suggested that a reduction in inflow, which might follow a curtailment of incentives to salesmanship, may make the funds more vulnerable in times of weakness (and high rates of redemption), thus forcing the sale of portfolio securities and a disruption of capital markets. This sort of argument can be levied against any change (including the original securities legislation), which almost invariably has some short term disruptive effects. What it disregards is the fact that stability and the continuity of growth of markets in the longer run depend in large part on their basic soundness. This will determine their ability to withstand real stress.

If it is argued that a ceiling on the sales charge is an arbitrary and paternalistic device for handling this problem, the reply must be that the alternatives seem unpromising. To do nothing is to forego governmental paternalism of a limited kind of favor of a statutory umbrella for the unrestricted private exercise of significant monopoly power. An alternative to the SEC proposal for the 5% ceiling on the sales charge would be the elimination of the resale price maintenance provisions of section 22(d),³ which might inject some price competition into selling at the retail level. Apart from the fact that the industry strongly supports this form of price regulation, it runs up against the previously discussed reluctance of dealers to compete on price. Thus there is a distinct possibility that by itself the abolition of 22(d) would have little or no effect on retail price competition. It is also argued with some cogency that if retail price competition did develop it would tend to strengthen the position of the large complexes that engage in direct selling, because they would be insulated to some extent (but by no means entirely) from the damage stemming from dealer disaffection with "cut" shares.

A further alternative action that might be taken, either alone or in conjunction with those previously mentioned, would be a relaxation of restrictions on fund advertising. It is one of the paradoxes of the "disclosure" rules that a no-load fund cannot push very aggressively the fact that it imposes a zero sales charge; when it goes beyond a "tombstone" and it easily runs afoul of the SEC's tendency either to require full disclosure or to permit virtually nothing in the way of publishing advertising. The situation might be significantly improved in terms of true investor knowledge if an intermediate ground for stressing important facts were opened up.

It is also suggested that mutual funds be required to disclose more fully the sales charge alternatives to the investor, perhaps on the front of the Prospectus. As noted earlier in regard to the suggestion of a need for more extensive disclosure in connection with the management fee, I feel that there are saturation limits in using disclosure as a means of creating a more informed market. The problem of deciding on the appropriate comparative information under full disclosure would involve serious regulatory problems, although in principle they are not beyond resolution.

Thus, while the abolition of resale price maintenance and improvements in disclosure (including comparative information) would tend to increase competition on the sales charge, and are thus desirable in their own right, I am skeptical about their adequacy. The 5% ceiling has the virtues of simplicity, effectiveness in limiting a perverse competition, and equity in fixing a rate on the high side of security market selling costs.

STATEMENT OF DONALD E. SCHWARTZ, ASSOCIATE PROFESSOR OF LAW,
GEORGETOWN UNIVERSITY

My name is Donald E. Schwartz and I am an Associate Professor of Law at Georgetown University Law Center. Prior to my becoming a law professor in 1966, I was engaged in private law practice in New York City for five years and

³ It should be pointed out that the elimination of the resale price maintenance provisions of section 22(d) is not in conflict with the 5% ceiling proposal and could be combined with it.

prior to that I was employed for approximately two years as counsel to several mutual funds. I came to that position after two years on the staff of the Securities and Exchange Commission.

I have had the opportunity to become acquainted with and to observe a large number of persons in the mutual fund industry. I believe that, in the main, the public is fortunate that this industry is managed by responsible and honest men. I believe that most of its managers are concerned with their responsibility for the welfare of small investors and, indeed, they think of their industry as the special medium for the small investor. I believe that H.R. 9510 and H.R. 9511 is in the interest of both the small investor and the industry.

My statement is given in my individual capacity and not as a representative of any organization. However, my views with respect to this bill are not entirely singular. Shortly after the S.E.C.'s Mutual Fund Report was published in December 1966, I discussed with a number of my colleagues at different universities, the desirability of forming a committee in order to demonstrate that support for mutual fund reform existed outside the Commission. Accordingly, a committee of 15 law professors, plus one professor of finance, Professor Edward Herman, of the Wharton School of Finance, came into existence to lend our modest support to this proposal. While we may not have an identical point of view on each specific item in the bill, all of us are of a mind that the investment company industry is in need of reform and that the proposals embodied in the bill before you, represent sound reform. The Committee membership was composed entirely of persons free to speak their individual opinions without fear of embarrassing any interest they represent. I am acquainted with many lawyers who share the views I express, but cannot speak out because of the loyalty they owe to their clients. I am convinced that support for this bill is much wider than the industry would have one believe.

I shall discuss the three major areas of concern in H.R. 9510 and H.R. 9511; management fees, sales loads and contractual plans.

Insofar as management fees are concerned, I consider the bill a modest proposal; much more drastic medicine might have been suggested. The structure of the typical mutual fund is at variance with that of most American corporations. The fund has no means for managing its own affairs. While the fund directors may make broad and necessarily vague policy decisions, the responsibility for defining and implementing those decisions is delegated to an outside group which charges a fee for the service. The outside group is no stranger to the fund; it usually consists of a corporation owned by the persons who created the fund, and who usually sit as members of the fund's board of directors. The delegation to this outside manager is performed by the directors who have no affiliation with it, but who, in turn, were selected by those who are affiliated.

Clearly, a director of a corporation is a fiduciary to his corporation and, in accordance with most modern judicial opinions, to the individual shareholders of that corporation as well. The investment advisor, dominated by directors of the fund and performing those tasks which most corporations perform for themselves, should similarly be viewed as a fiduciary, if not by the courts then certainly by Congress. He is, of course, entitled to compensation when he renders services, notwithstanding the fact that the board of which he is a member determined the amount. But in his relationship as a fiduciary, he has learned to exercise restraint in the amount of his compensation which he directs the company to pay to him. If he failed to think of himself as a fiduciary, and instead regarded himself as a stranger dealing at arm's length, his good conscience would impose less restraint on the amount of his compensation he arranges to have paid to himself. Thus, this first and perhaps most important safeguard against excessive compensation would be broken down if the manager of the corporation thought that he was under no obligation to view the interests and welfare of the corporation and its owners when his fee was established. I submit to you that responsible representatives of the industry have stopped thinking of themselves as fiduciaries to the corporation and its owners. Thus, an esteemed attorney to the mutual fund industry stated at a conference at the University of Pennsylvania earlier this year that the adviser "is not a fiduciary as far as his fee is concerned. There he contracts with the stockholders and the stockholders are represented by the independent directors." (115 U. of Pa.L.Rev. 726, 745, Comments of Alfred Jaretzki, Jr.) Under this view, self restraint, becomes vitiated and protection against excessive compensation is shifted to the board members least involved in managing the affairs of the funds. I believe this view is erroneous and it has been permitted to de-

velop because some representatives of the industry have hypnotized themselves into thinking that the formal structure they have woven produces a true arms length bargain merely because the formality of approval by independent directors was observed. Not all industry representatives agree, as demonstrated by testimony of Investment Company Institute spokesman before this committee. At the very least, this bill will achieve the desirable goal of clarifying for the mutual fund director just what is his obligation. The experience of the investment company industry has demonstrated that however well-intentioned may be the so-called unaffiliated or independent directors, they have not succeeded in protecting shareholders from whatever fee the investment adviser has asked.

Of course, the protection of the courts may be sought to protect the fund and the shareholders from paying an excessive fee. But, again, we cannot ignore history. It must be apparent to anyone who has studied the history of the mutual fund litigation which has occurred since 1960, that the courts are ill-disposed to invoke their judgment in the area of compensation. Once the fee imposed by the investment adviser has been adopted by the Board of Directors, and approved overwhelmingly by the shareholders—a simple ritualistic exercise—the courts will upset this judgment only if it is proven by the person challenging the fee that the fee is so excessive that it constitutes waste. Judge Friendly, in a statement submitted to the Senate Banking and Currency Committee during its hearing on S. 1659, (at page 1015) and during the course of these hearings, characterized the burden of the plaintiff in attempting to show such waste as being forced to prove that the fee was “excessively excessive” or “unreasonably unreasonable.” Such a task is so burdensome as to be almost impossible. Thus, no plaintiff has prevailed in any such suit despite the fact that in one case, Chancellor Seitz observed that while he could not find as a matter of law that the fee charged in that case, amounting to the prevailing industry rate of one-half of one percent, constituted waste it was fast approaching that standard. *Save v. Brady*, 40 Del. Ch. 474, 498, 184 A.2d 602, 616-17 (Del. Ch. 1961)

The combination of hurdles presented to the shareholders of a fund has proven insurmountable. The investment adviser feels no obligation itself to protect the best interests of the fund of the shareholder when the fee is established, assigning that task to so-called independent directors. The independent directors have simply not been up to the task. Finally, under the existing state of the law, the courts have been unable to provide the necessary protection. The only alternative then, is new federal legislation which will create a federal standard by which all management fees must be tested. I submit that proposed amendment to § 15(d) of the Act is the most modest approach to this problem. The bill merely tells us that all compensation paid by the fund to the adviser shall be reasonable and sets forth an outline of criteria to assist a tribunal in making that factual determination. It leaves with the person challenging that fee the burden of proving by the preponderance of the evidence, that the fee is unreasonable. This is consistent with the approach undertaken by Congress in 1940 when it enacted the Investment Company Act. That statute outlawed what were the most flagrant conflicts of interest in the investment company interest. The determination of the management fee is a clear conflict of interest which is incapable of redress under existing law.

Personally, I believe this proposal is too modest, and I know that my view on this is shared by a number of my colleagues. Nonetheless, I think it not unreasonable to believe the bill stands an excellent chance of successfully accomplishing its purposes. First, it replaces an unrealistic state law standard with a federal standard for determining the excessiveness of management compensation. Second, the statement in the bill with respect to the burden of proof although in my opinion unsatisfactory, at least overcomes the extraordinary burden imposed upon plaintiffs under present law, whereby if the fund was successful in obtaining shareholder ratification for the management fee, then the burden upon the plaintiff is to prove that the fee was so excessive that no reasonable person could have adopted such a fee. Excessive management fees have often been sustained on the basis of the fact that the overwhelming number of shareholders approved of the transaction. Shareholder ratification under these circumstances constitutes a hollow act. Shareholders of a fund are asked, by means of a proxy statement to approve of the appointment of an advisor at a specified fee or to disapprove. They are left with no alternatives in between. They cannot renegotiate the fee imposed by the advisor. The mutual fund shareholder is not in the same position as a shareholder in other corporations in this matter. Elsewhere, he may

feel free to reject a submitted transaction without fear of disrupting the corporation. If the mutual fund shareholders reject an investment advisory contract, the fund is left with no management at all. Most important, of course, in an uncontested election, it is common knowledge that he who controls the proxy machinery can obtain the approval of anything he seeks; at least, there is no record of any experience to the contrary. That important legal consequences as to the meaning of the vote should flow from this exercise is the sheerest of legal casuistry.

Third, the bill provides that the role of independent directors is to be enlarged. There is imposed upon them and spelled out with some care the affirmative responsibility which they have in selecting the investment adviser and in negotiating and determining the fee to be paid to the investment adviser. Moreover, the added detachment of the persons who are to perform this function, as a result of the amendment defining interested directors, increases the likelihood that independent judgment will be brought to bear on the question, particularly when coupled with the other provisions of the bill regarding compensation.

The safeguards of the bill are not as strong as I think conditions in the industry warrant, but they are a vast improvement over existing law. I believe the bill will work because I believe that the enactment of a federal standard spelling out guidelines, both for interested and unaffiliated directors of mutual funds, will have a most salutary effect on the industry. I believe that those investment advisory fees which are not at the present time reasonable will become reasonable, more as a result of voluntary action initiated by the industry than by litigation. But to encourage that result and to emphasize the continuing nature of the management's duties, I believe it is important to remove some of the temptations that exist under the present law for mutual fund managers to aggrandize themselves at the expense of the shareholders and the funds.

When this proposal is labelled as modest, consider how much more drastic could have been the proposal to reform advisory fees. As mentioned earlier, I believe it would be appropriate for the bill to provide that the burden of justifying the reasonableness of the management fee should be imposed upon the managers of the fund. Plaintiff's task, while not insuperable under this bill, is nonetheless difficult. Further, the bill could provide that the liability for charging an excessive fee would be imposed, not just upon those who received it, but upon those who approved it, that is, the so-called independent directors. The bill specifically provides that the liability shall be limited to those who receive the excessive compensation. More drastic than either of the above, the bill could have insisted that all mutual funds be managed internally and not by an outside investment advisor, in the same manner as other corporations. This is already the pattern of a number of mutual funds, including the oldest of the funds, Massachusetts Investors Trust. Such management has proven to be less expensive to the fund and its shareholders and, if for no other reason, it would commend itself on that basis alone. I believe that if such a proposal had been made, it would merit serious consideration. I think the proposed § 15(d) is the very least which we can expect in a bill which considers itself Mutual Fund Reform legislation.

I shall not comment in detail upon the provision in the bill which would impose a 5% limitation on sales loads. There are large economic questions at stake in that issue on which I do not feel myself qualified to speak. However, I do wish to point out that the existing state of the law and pattern of mutual fund selling leaves investors defenseless against spiralling sales charges, which have the effect of making mutual fund shares increasingly expensive.

Mutual fund shares are, as is commonly known, not bought but sold. Indeed, the industry has repeatedly argued that the effect of the load limitation would be to decrease the number of shares of mutual funds sold because the sellers would receive smaller compensation. It seems ironic that people will buy less of a good product when, without loss of quality, it becomes less expensive. The reduction of the sales load would not make mutual funds any less attractive to own, only cheaper. But the industry's arguments are undoubtedly correct in that they recognize that the sale of fund shares depends upon the eagerness of the mutual fund salesman.

A fund desirous of growing finds that the easiest way to achieve such growth is by adding extra inducement to the salesman to sell the shares of the fund. Growth serves the investment adviser whose fee is enlarged; whether growth helps the fund or its shareholders has, at least, not been shown. This growth is accomplished by increasing, not decreasing, the sales load and, thereby offering a greater reward to the salesmen. So, for competitive purposes, mutual funds

become more expensive. At the same time, § 22(d) of the 1940 Act says all dealers must sell shares of the mutual fund at the same price. The result is that the facts of life in the industry deprive the customer of interbrand competition which would reduce the price and the law prohibits intra-brand competition, insofar as the price is concerned. Under these circumstances, only a revision in the law can protect mutual fund purchasers from ever-increasing sales loads. The operations of the free market are curtailed in the sale of this particular product. The alternatives, as I see it, are either to reduce by law the sales load by placing a flexible limitation thereon, or by repeal of § 22(d) of the 1940 Act. The latter would, as I understand it, be especially upsetting to the equilibrium in the industry, and the industry does not favor repeal. Further, the repeal of § 22(d) would have no effect on those funds which are sold by internal dealer organizations, such as the funds managed by Investors Diversified Services. The other alternative is some power of legal limitation on the sales load, and I am inclined to accept the Commission's proposal embodied in § 21 of the bill amending § 22 of the 1940 Act as the best proposal I have heard yet.

Other means for reducing the cost of mutual funds shares should also be sought. The S.E.C.'s Rule 22d-1 prohibits a reduced sales load for persons acting as a group to gain advantage of a discount available to a large purchaser. This group purchase is resorted to in other commercial areas and it should be available here. Severe advertising restrictions have prevented the public from being adequately informed of no-load funds and may have caused higher sales loads made necessary by increased solicitation expenses which might be reduced by appropriate advertising format.

Finally, I would address myself to the proposal to abolish contractual or front-end load plans. Earlier in my statement I suggested that the bill was a modest proposal and yet I favor a provision which is not so modest. In my opinion, there can be no temporizing with front-end load plans. All of the theoretical justifications which have been expounded and all of the homage paid to the virtue and efficacy of full disclosure, do not detract from the hard experience that many contractual plan owners have suffered, and which others will continue to suffer from the effects of this form of selling unless it is abolished. This is by virtue of the nature of the contractual plan and its potential customers, and by the nature of the persons who are attracted to the sale of contractual plans. What we have is the least sophisticated investors being approached by the least qualified salesmen. The result of this unfortunate encounter is all too often financial distress. The front-end load device is nothing more than a subsidy to the sales organization of the industry paid by those persons least able to afford it. Unconscionable methods of selling goods to customers increasingly have shocked the conscience of the public and the courts. While the front-end load device is not conceived in fraud, it unfortunately too often affects people in a similar fashion. Congress' response to the experience with the device which is detailed in the S.E.C.'s Mutual Fund Report would most appropriately be the complete curtailment of the device.

J. H. HILSMAN & Co., INC.,
Atlanta, Ga., May 19, 1967.

Hon. ROBERT G. STEPHENS, Jr.,
The House of Representatives,
Washington, D.C.

DEAR BOB: The Securities & Exchange Commission has introduced certain revisions to the Investment Company Act of 1940 and the Investment Advisors Act of 1940 in S1659.

Effect of these amendments is to decrease the dealer's/salesman's compensation by reducing the commission that will be paid such dealer or salesman by the mutual fund, and to prohibit the mutual funds from further compensating the dealer/salesman through reciprocal business—that is, the fund in its purchase of securities on an exchange would be prohibited from directing part of the commission to those dealers or salesmen who have participated in the distribution of such mutual fund shares.

Proposed amendments, to me, are abhorrent and have been introduced by the SEC without any consideration of the economic impact on the security dealers

or the public, generally. Income from sale of mutual funds is an insignificant portion of my firm's business, but we do believe that the evangelistic effort of the many small security dealers and salesmen who specialize solely in mutual funds is beneficial to the whole industry.

The small companies who do primarily nothing but mutual funds are in reality the John The Baptists of the free enterprise system—invest in America—selling a participation in the capitalist system. While we are not interested in the small sales that are generally made by those who specialize in mutual funds (the average mutual fund share purchased today is \$1,240—commission gross of about \$86.80), we do feel that such sales representatives serve a very worthwhile purpose and they introduce people into the investment community.

Compensation paid for mutual fund sales is no where near as high as that paid for sale of a life insurance policy, yet the sales of each type of security, mutual funds and life insurance, is highly competitive with the other.

An economic survey of the National Association of Security Dealers concludes that the largest firms in the NASD would suffer only 8% loss in net income as a result of the enactment of all SEC proposals, while the smaller firms would have income after taxes reduced by more than three times. Of these smaller firms operating in the black before the SEC proposal, three-fifths would be forced from a profit to a loss position. Thus, it is obvious that many, if not most, of these firms would be forced out of business by the SEC proposal.

I hope that you will oppose these amendments with Mr. Sparkman, the proposer, and on the Floor of the House, at least until such time as the Securities & Exchange Commission provides some economic basis for their recommendations, other than the flat charge that profit in itself is evil.

I feel that my industry and my country needs these voices in the wilderness crying out the virtues of the American system. I can't afford to go into the wilderness, and they can't afford to stay there with the reduced compensation.

Sincerely yours,

John
J. E. McCLELLAND,
President.

INVESTMENT COMPANY INSTITUTE,
New York, N.Y., October 27, 1967.

Hon. JOHN E. MOSS,
*Chairman, Subcommittee on Commerce and Finance,
Rayburn House Office Building, Washington, D.C.*

DEAR CONGRESSMAN MOSS: In the course of Chairman Cohen's testimony on H.R. 9510 and 9511, he stated that the Investment Company Act of 1940 has been ineffective in controlling management fees. In so doing he made statements concerning the legislative history of the 1940 Act which call for correction.

He argued that the statute had provided "a shield" (e.g. Hearings, p. 869) which protects the profits of the management company. He also implied that what he considers to be inadequacies in the statute stem from compromises in the original bill which were made while it was pending in the Congress on the eve of our involvement in the Second World War (Hearings, p. 19). Finally, during his final appearance before the Committee, Chairman Cohen concluded that the situation has developed since then to "defeat the very purposes of the Congress in 1940 . . .". Or, as was also stated by Chairman Cohen: "We are trying to restore the statute to what the Congress intended to achieve in 1940". (Hearings, p. 870).

Since we have been of the view that the primary question before the Congress is whether there is any condition in the mutual fund industry which calls for remedial legislation, in our presentation we did not focus on the legislative purposes which underlay the 1940 Act. However, in view of the repeated claim that the proposed legislation with respect to management fees is not novel because in 1940 Congress attempted to legislate in this area, albeit ineffectively, some comment is called for. The Record of the 1940 Act hearings is replete with evidence that the purposes of the Congress were not to reverse traditional corporate law and embark on regulation of management fees. The testimony before the House Committee of David Schenker, who managed the Bill for the SEC, is quite definite and clear on this point. It should be noted that in the following extract Mr. Schenker was testifying on the original bill, *before* there were any of the compromises that Chairman Cohen alluded to:

"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 SEC assertions, that the Congress is now dealing with proposed new and novel legislation and not with a reform or extension or 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, 53) 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?

Answer. The corporate law that applies to the conflicts of interest which exist in the mutual fund industry is the same as that which applies to all other corporations, as shown by the attached opinion of Gaston, Snow, Motley & Holt, and Sullivan & Cromwell.

Question No. 1(d). Are the remedies available to stockholders of mutual funds with respect to abuses which may occur in connection with "conflicts of interest" any different from the remedies available to stockholders of corporations generally?

Answer. The remedies available to stockholders of mutual funds with respect to conflicts of interest are the same as those available to stockholders of other corporations, as shown by the attached opinion of Gaston, Snow, Motley & Holt, and Sullivan & Cromwell.

Question No. 2. Chairman Cohen has said that the investment adviser of an investment company controls the investment company would you comment on this?

Answer. We think that Chairman Cohen is wrong in his assertion that the investment adviser controls the fund. This claim is not supported.

A glance at the list of representative independent directors which we have furnished for the record shows them to be successful industrialists, executives, public officials, educators and administrators, attorneys and military men, who on the very face of it are hardly susceptible to control or domination by others.

A strong indication of the unsupportability of Chairman Cohen's claim is that over the years the SEC has not, to our knowledge, taken action in this area, as it would have had a duty to do. If the claim that the investment adviser controls the funds were true, the SEC would have been derelict in the responsibility imposed on it by law to rectify the situation.

These legal responsibilities imposed on the SEC arise from Section 10(a) of the 1940 Act which requires that at least 40% of the fund's directors be independent of the investment adviser, and from Section 10(b) which requires that a majority of the fund's directors be independent of its principal underwriter. Since the investment adviser and the principal underwriter is usually the same person, a majority of the fund's directors are required to be independent of the investment adviser. The SEC has a plain duty to enforce these requirements for independent directors which prohibit an investment adviser from controlling the fund.

Section 2(a)(9) of the 1940 Act contains explicit provision for procedures whereby the SEC on its own motion can determine whether a director of a fund is "controlled." So far as we know, the SEC has never availed itself of these procedures to determine whether in fact the fund's directors are controlled and the board of the fund improperly constituted under Section 10(a) or 10(b). Its failure to do so is inconsistent with its Chairman's assertion now that the fund's directors are controlled by the investment adviser. Section 2(a)(9) is also available to individual shareholders as well as the SEC.

Question No. 3. Has Chairman Cohen or any of the other Commissioners ever stated what they consider to be reasonable compensation to be paid by a company of a given size and performance?

Answer. No. The SEC has never stated what it believes to be a reasonable fee in any given case or what is a reasonable level of fees generally. During the hearings in the House and the Senate, the Chairman restricted himself to a number of very general statements on this point, such as: " * * * there are fee situations here that are excessive." (House Hearings, p. 874). " * * * while we by no means suggest that all investment advisory fees are unreasonable, or even that most of them are, it would be singular indeed, * * * if all fees have always been and always will be reasonable." (p. 833). " * * * we are not suggesting that anyone is too high or anyone is too low * * *". (p. 837).

Even though the SEC is seeking authority to proceed in court against an adviser whose fee it considers unreasonable, it has not stated the extent to which, or the circumstances in which it plans to use this power if granted. It has asked Congress for the power to sue and has given no one any idea of what it would do with this power. Without knowing what the Commission will do, industry has a somewhat better idea of what so-called strike suit lawyers will do. A change in the law as significant as the one proposed by the SEC would be an open invitation to widespread litigation which will involve fund officials in time-consuming and costly lawsuits, thus diverting their energies from their main job of serving their shareholders.

Question No. 4. One strong implication from the testimony of the SEC is that mutual fund shareholders are all small and perhaps unsophisticated investors who do not have the ability to evaluate whether the management fee they pay is too high. Also, it was stated that the fee as to each of these investors is so small that none of them would be inclined to question the fee. Are there substantial individual investors or institutions who invest in mutual funds who would have the sophistication and the economic interest in challenging the level of management fees if they were so inclined?

Answer. The implication conveyed by the SEC that mutual fund investors lack the sophistication and the economic interest to effectively protect themselves is not true. One of the most important areas of growth in the mutual fund business has been in investments by institutions such as banks, pension funds, college endowment funds, trustees, churches, labor unions, etc. A 1954 survey showed that 58 mutual funds representing about 66% of industry assets had a total of 35,821 institutional mutual fund shareholder accounts valued at \$283 million. By the end of 1966, a total of 74 funds had 707,705 institutional shareholder accounts valued at \$4 billion. Many of these accounts are held or administered by highly sophisticated persons with broad financial experience. Yet not only do these people continue to invest in mutual funds but as far as can be determined none of them have been involved in management fee litigation or have threatened such actions. For example, the following table shows 15 of the most substantial investors in one of the large mutual funds which has a management fee rate of $\frac{1}{2}$ of 1%.

LISTING OF 15 OF THE LARGEST ACCOUNTS OF A \$2 BILLION MUTUAL FUND VALUED AT SEPT. 30, 1967

Registered owner	Shares owned	Net asset value
1. Northeastern Union's pension fund.....	243,200	\$3,750,100
2. A national union's pension trust.....	184,898	2,851,100
3. A large city bank as trustee for a chemical manufacturer's retirement plan.....	139,102	2,144,900
4. An oil company's retirement plan.....	137,599	2,121,700
5. A large city bank as trustee for a food manufacturer's profit sharing plan.....	124,159	1,914,500
6. A nominee for a large city bank acting as a trustee.....	118,138	1,832,400
7. A State treasurer as custodian for a school employees' retirement fund.....	88,823	1,369,600
8. A board of trustees for a State teachers' retirement fund.....	81,510	1,256,800
9. Trustees for a restaurant chain's retirement fund.....	51,471	793,600
10. A large city bank as trustee for a machinery company's employee retirement plan.....	48,765	751,900
11. A manufacturer's employees profit sharing plan.....	47,417	731,100
12. A manufacturer's profit sharing trust.....	42,885	661,200
13. A board of pensions for a midwestern church.....	42,744	659,100
14. A large city bank as trustee for an appliance manufacturer's profit sharing trust.....	40,693	627,400
15. A large city bank as trustee for an auto dealers profit sharing plan.....	37,576	579,400

Question No. 5. I understand some funds permit their stockholders to reinvest dividends at the net asset value without paying a sales load. Others provide dividends be reinvested at the public offering price. In the industry generally, in terms of dollars, what is the approximate percentages of dividends reinvested at net asset value and at the public offering price?

Answer. Most investment income dividends (both by dollars and by companies) are being reinvested at asset value with no sales charge.

Based on data collected by the Investment Company Institute for the first 6 months of 1967, 80% of the dollar amount of reinvested investment income was reinvested at net asset value (with no sales charge) and the remaining 20% at offering price (net asset value plus applicable sales charge).

Of the 302 funds listed in the Mutual Fund Panorama, compiled by Arthur Wiesenberger & Co., 211 companies, being 70% of the total listed, provided for reinvestment of dividends at net asset value, 78 companies, being 26% of the total, offered reinvestment of dividends at offering price, and the remaining 13 companies, being 4% of the total, made no provision for reinvestment.

Question No. 6. Would any reduction in sales which might result from the proposed reduction of sales charges to 5% have any effect on the ability of a fund to meet redemptions of its shares by shareholders, in view of testimony that the mutual funds receive almost enough cash from reinvestment of income dividends to meet redemptions?

Answer. Chairman Cohen testified that he did not think that mutual funds would be forced into liquidation if sales declined as a result of the 44% reduc-

tion in sales charges recommended by the SEC. He stated: “* * * the amount of cash inflow to the funds solely from reinvestment of dividends almost equals the amount paid out each year by way of redemptions, almost equals it, so that you have got a built-in push in there.” (House hearings, p. 125.) This testimony that reinvestment of dividends almost equals redemptions is in error. The following chart shows total mutual fund redemptions of Investment Company Institute members for the years 1955–1967 and the cash flow from reinvestment of dividends by shareholders. This chart shows that for these years less than 25% of redemptions were met by reinvestment of dividends. Thus, a decline in sales can have the effect of putting mutual funds in a liquidating status.

REINVESTMENT OF INVESTMENT INCOME DIVIDENDS—1955–67 (6 months)

[Dollar Amounts in Millions]

Year	Redemptions	Reinvested dividend income	Reinvested dividend income as a percent of redemptions
1955.....	\$442.6	\$61.8	14.0
1956.....	432.8	85.5	19.8
1957.....	405.7	106.8	26.3
1958.....	511.3	119.5	23.4
1959.....	785.6	159.9	20.4
1960.....	841.8	196.1	23.3
1961.....	1,160.4	213.8	18.4
1962.....	1,122.7	255.3	22.7
1963.....	1,505.3	285.3	18.9
1964.....	1,874.1	363.8	19.4
1965.....	1,962.4	432.2	22.0
1966.....	2,005.1	488.9	24.4
1967 (6 months).....	1,283.9	257.8	20.1

Question No. 7. To what extent do state “Blue Sky Laws” or the state securities administrators regulate sales loads? Would the proposed legislation supersede any of these regulations?

Answer. The Commission’s suggested maximum sales load of 5% would supersede state law on the subject. Most states have Blue Sky Law and security commissions which regulate the distribution of securities in the state. With respect to sales loads, at least twenty-three states have established maximum sales loads, some of which apply to all securities and some of which apply specifically to mutual fund shares. They range from 8½% to a maximum of 20%.

	Percent		Percent
Alabama.....	² 15	New Hampshire.....	¹ 9
Arizona.....	² 15	North Carolina.....	¹ 10
California.....	10– ² 15	North Dakota.....	15
Georgia.....	² 15	Ohio.....	¹ 9–15
Illinois.....	¹ 2 10	Oklahoma.....	15
Indiana.....	15	Puerto Rico.....	¹ 8½
Iowa.....	³ 20	South Carolina.....	³ 20
Kansas.....	10	Tennessee.....	³ 15
Kentucky.....	³ 15	Texas.....	³ 20
Michigan.....	¹ 9	Wisconsin.....	¹ 8½– ² 15
Minnesota.....	¹ 2 10– ² 15	Wyoming.....	² 20
Missouri.....	10–12½		

¹ This maximum applies specifically to investment company shares.

² Maximum is for “selling expense” which includes commissions, salaries, advertising and other expense incurred in selling, but does not include legal fees or cost of prospectuses.

³ Maximum “selling expense” also includes legal fees and cost of prospectuses.

All these limits would be superseded by the Commission’s bill. Chairman Cohen was originally under a misapprehension of how the state securities administrators felt about federal securities legislation which would impinge on their duties. He stated in the House Hearings (p. 851, 852) that the North American Securities Administration Association had passed a resolution endorsing all of the SEC’s recommendations.

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

Can you comment in detail as to the necessity for 22 (d) in the mutual fund industry and the likely effects if it was removed from the law?"

Answer. Section 22 (d) is similar in effect to the fair trade laws which exist in many states. It is also similar to anti-rebate laws dealing with life insurance commissions. Section 22(d) and these anti-rebate laws prohibit fee-splitting and thus prevent discrimination between customers. Every state in the union has such a law with respect to life insurance commissions.

Section 22 (d) does not, of course, prohibit mutual funds from setting different sales charges from each other, and, in fact, sales charges range from those of about 50 funds with no sales charge to funds with sales charges of 8½%.

Moreover, there are reasons for Section 22(d) which are unique to the mutual fund industry. Upon request of the shareholder, his mutual fund shares must be redeemed by the fund at their current net asset value—this is required by law. In no other industry does the consumer have such an absolute right. Thus, to meet redemptions on an orderly basis which currently run on an industry-wide basis at about \$2.5 billion per year, mutual fund underwriters must maintain a national distribution system.

The repeal of Section 22(d) would cripple, if not end, the present system of distribution since the result would be that most transactions would take place in the over-the-counter market. Those who recommend the repeal of Section 22(d) have not even purported to consider whether the over-the-counter market can insure adequate distribution just as they have not considered that a mutual fund shareholder has an interest in preserving a distribution system which makes possible the orderly redemption of his shares. The plain fact is that the over-the-counter market cannot support the distribution necessary to meet redemptions, especially during periods of market stress. (See Special Study of Securities Markets of the SEC, part 2, p. 798).

Although the SEC has conceded that the repeal of Section 22(d) might lead to problems of price discrimination between customers and create competitive advantages for certain mutual fund underwriters, it was not until the House Hearings that Chairman Cohen finally stated: "In the first place, there is some uncertainty as to the consequences of repeal of Section 22(d)." (House Hearings p. 849). Those who have day-to-day practical experience in the mutual fund business believe that the consequences are not uncertain—the effect would be highly disruptive to the mutual fund industry and would be injurious to the investing public.

We enclose herewith a more detailed memorandum of our view of this subject.

Sincerely yours,

ROBERT L. AUGENBLICK, *President.*

[Enclosures]

EXHIBIT A

GASTON, SNOW, MOTLEY & HOLT,
Boston, Mass.,

SULLIVAN & CROMWELL,
New York, N.Y.
October 23, 1967.

INVESTMENT COMPANY INSTITUTE,
New York, N.Y.

DEAR SIRS: In connection with the testimony of Chairman Cohen before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce of the House of Representatives concerning H.R. 9510 and H.R. 9511 and questions asked by various of the Committee members, you have asked us to review generally the standards applied by the courts to advisory fees and the remedies of a shareholder of an investment company who believes that the fees are too high. We have set forth below our view of the present state of the law in these respects.

Before analyzing the position of an investment company shareholder or the principles applied by the courts it is important to emphasize an important fact which puts the possible conflict of interest problems of investment company directors and stockholder remedies into perspective. The possibility of conflict of interest problems is common to all corporations, and the role played by non-interested directors, shareholders and the courts is no different for investment companies than for any other corporation.

Chairman Cohen has implied that the requirements of the Investment Company Act of 1940 have somehow left investment company stockholders in a worse position than other corporate stockholders when dealing with a conflict of interest situation: viz.

"Thus, the congressional requirement of approval by the shareholders and a majority of the unaffiliated directors which was intended to act as a protection for the shareholders, has actually insulated the fees from judicial scrutiny and deprived the shareholders of the benefit of judicial protection they would otherwise have enjoyed." (Statement of Securities and Exchange Commission before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce on H.R. 9510 and H.R. 9511 on October 10, 1967, p. 40.)

It is true that approval of an advisory contract by disinterested directors or by stockholders has an effect on the manner in which the courts review the problem. However, it is not true that these requirements of the Act put the stockholders of an investment company in a different position from other corporate shareholders. There was nothing in the law prior to the Act which in any way precluded approval of an advisory contract by disinterested directors or by stockholders.

There have been many court decisions which have considered the role of independent directors, stockholders and the courts in resolving the potential conflict of interest problem. In fact, there are a number of cases dealing with arrangements similar to those in the investment company industry. For instance, such a pattern is fairly common in the hotel industry where the corporation owning the hotel will engage a management company to operate the hotel for a fee. This pattern is also found to a certain extent in the insurance industry. The important point, however, is that these cases concern corporations of all types and the principles applied are the same whether the corporation involved is an investment company or not.

A review of numerous decisions in this area indicates a framework for solving the conflict of interest problem as described below. Where there is a transaction in question, whether in the forms of a contract or compensation arrangement, which is between the corporation and a director or between the corporation and other corporations in which one or more directors have an interest, three basic situations present themselves. First, where the presence or vote of an interested director is needed for a quorum or for board approval; second, where the presence or vote of an interested director is *not* needed for a quorum or board approval; and third, where a majority of stockholders has approved of the transaction.

In summary of the review below: where interested directors are making their own judgment of a transaction, they have the burden of convincing a court that it is reasonable and fair. Because of this conflict of interest their judgment is not in issue. It is assumed to be non-objective and the terms of the transaction are directly considered by the court. However, when non-interested directors have applied their judgment, the assumption is that their judgment was correct or in the case of stockholder approval that they properly exercised their franchise. In order to invalidate the transaction in either of these cases, it must be shown that the transaction was so unreasonable or unfair that it was beyond the power of the directors to approve or of the majority stockholders to ratify the transaction to the detriment of the non-assenting stockholders.

1. VOTE OF NON-INDEPENDENT DIRECTORS NECESSARY FOR APPROVAL

If the transaction is approved by a board in which the presence or the vote of an interested director is necessary for approval, when any stockholder complains that the transaction is unfair or overreaching the directors who would uphold this transaction have the burden of proving that it is fair and reasonable and entered into in good faith. If they fail, the transaction will be rescinded and if injury has been suffered, damages will be recovered for what was essentially an invalid transaction.

Many different words are used to express the standard applied, but their import is clear. Because of the fact of self-dealing, where the vote of an interested director is necessary, the burden of showing that the arrangement is fair and reasonable is put on those who have the conflict of interest. Further, and most important, in this one instance the court itself decides whether the arrangements meets the standard of reasonableness, and then with great reluctance. However,

it has no choice. This follows from the fact that it cannot rely on the business judgment of the board. By definition the board cannot exercise its judgment objectively, for its actions depend on the vote or votes of interested directors. *Shlensky v. South Parkway Bldg. Corp.*, 19 Ill. 2d 268, 166 N.E.2d 793 (1960); *Gottlieb v. Heyden Chem. Corp.*, 33 Del. Ch. 82, 88, 90 A.2d 660, 663 (Sup.Ct. 1952).

The understandable reluctance of courts to directly judge the reasonableness of a corporate transaction except where there is no other alternative is expressed in many decisions. The principle appears in the familiar *American Tobacco* case of *Rogers v. Hill*, 60 F.2d 109 (2d Cir. 1932), *rev'd*, 289 U.S. 582 (1933), where the compensation of six executives was attacked. Judge Swan, whose dissenting position in the Court of Appeals was later upheld by the Supreme Court, stated the principle as follows:

"The determination of fair compensation for services is primarily for the directors. Courts hesitate to overrule the discretion of directors fairly exercised." (60 F.2d at 114)

Another leading case expressing this reluctance is *Seitz v. Union Brass & Metal Mfg. Co.*, 152 Minn. 460, 189 N.W. 586 (1922), where the court found in favor of the defendants who were charged with receiving excessive salaries.

"In determining whether salaries are excessive and unreasonable so that there should be a restoration courts proceed with some caution. An intolerable condition might result if the courts should too lightly undertake the fixing of salaries at the suit of dissatisfied stockholders. An issue as to the reasonable value of the services of officers is easily made. It is not intended that courts shall be called upon to make a yearly audit and adjust salaries. The dissenting stockholder should come into court with proof of wrongdoing or oppression and should have more than a claim based on mere differences of opinion upon the question whether equal services could have been procured for somewhat less." (152 Minn. at 464-65, 189 N.W. at 587-88)

Particularly appropriate is the statement of the court in *Cullen v. Governor Clinton Co.*, 279 App. Div. 483, 485, 110 N.Y.S.2d 614, 616 (1952), where a dissident stockholder attacked a management contract between a corporation owning a hotel and a hotel management company.

"Whether the hotel could better be operated through the medium of a management company presented a question of business judgment. If the decision had been arrived at as the result of an honest, prudent and careful belief of the directors that it was for the best interest of the hotel company, then that determination would not be subject to interference by the courts, even though an error in judgment may have been committed." (279 App. Div. at 485, 110 N.Y.S.2d at 616)

2. APPROVAL BY INDEPENDENT DIRECTORS

A different situation obtains when there is a disinterested majority of directors able to consider the transaction. Here the courts recognize the basic representational structure of corporate form. That is, within limits of proper conduct, it is the duty and function of a board of directors to exercise their business judgment in determining whether a transaction is in the interest of the corporation. If a majority of the directors are not interested in the transaction and are free of domination by the interested director, then there is no reason to suspect or ignore their judgment unless on its face the terms of the transaction are so unfavorable to the corporation that it is beyond the board's power to approve it. Courts have used a variety of expressions, including "waste" and "gift of corporate property", to describe such unfavorable transactions. Regardless of the words used, the principle is the same—i.e., the court will upset the decision of the board only where it concludes that the board's judgment is manifestly out of line with what a reasonable man's business judgment could be. See *Beard v. Elster*, 39 Del. Ch. 153, 162, 160 A.2d 731, 737 (Sup. Ct. 1960). When such a transaction is challenged not only is the above standard applied, but the complaining party has the burden of showing that the arrangement was so extreme that it should be rescinded. This approach is partly a result of courts being reluctant to interfere in the judgment of an independent board whose very function is to make this kind of decision. It also reflects the desirability of maintaining stability and certainty in affairs of corporations and their contracts with others. If, when challenged by a stockholder (or the SEC), independent boards of corporations generally were required to show the fairness of every contract

approved in which one of the directors may have had an interest, corporate enterprise would be severely hobbled.

3. APPROVAL BY STOCKHOLDERS

Stockholder ratification of a transaction, assuming adequate disclosure of the relevant facts, does not essentially change the situation from that described in paragraph 2 above where an independent board has approved a transaction. Where there is no independent board, stockholder ratification is considered to have the same general effect as the approval of an independent board. *Kaufman v. Shoenberg*, 33 Del. Ch. 211, 91 A.2d 786 (Ch. Ct. 1952). The basic theory of corporate government is even clearer here. If the majority of the shareholders are in favor of a particular corporate transaction, the minority are bound by this decision of the majority. That is always the position of a dissenting minority shareholder in a corporate enterprise unless the state corporate law provides a right to receive fair value for his stock by appraisal as in the case of mergers or sale of assets. (A right which open-end shareholders have automatically at all times.) However, his property rights as a stockholder are such that, if there is a transaction amounting to a "waste" of the corporate property, this can be said to be something he did not bargain for and is not within the power of either a board of independent directors or a majority of the stockholders to approve. As in the case of approval by independent directors, the underlying principles of corporate enterprise and corporate government require the complaining minority shareholder to show that the arrangement was so excessive that it improperly deprived him of a property right as a stockholder in the corporation.

The standard applied is described by the courts in varying words such as "excessive", "waste", etc. These terms standing alone do not reveal the true nature of the judicial inquiry and protection offered to dissenting shareholders. A determination of "waste" or "excessive" does not involve the court's subjective judgment of what it would consider fair or reasonable compensation for the specific services rendered; that difficult decision is properly vested in the business judgment of corporate management or in the stockholders if the matter is submitted to them. The test is whether as a matter of law the compensation exceeds the range of reasonable business judgment, or, as stated in *Saxe v. Brady*, "whether the cost . . . of obtaining advisory services bears some reasonable relation to the value of the services rendered." 40 Del. Ch. 474, 492, 184 A.2d 602, 613 (Ch.Ct. 1962). See also *Rogers v. Hill*, 289 U.S. 582, 591-92 (1933); *Heller v. Boylan*, 29 N.Y.S.2d 653, 668 (Sup.Ct. 1941), *aff'd*, 263 App. Div. 815, 32 N.Y.S.2d 131 (1941); *Kerbs v. California Eastern Airways, Inc.*, 33 Del. Ch. 69, 74, 90 A.2d 652, 656 (Sup.Ct. 1952). This is an inquiry that the courts are qualified to make and offers shareholders of mutual funds the protection enjoyed by all stockholders under the general corporate law.

GASTON, SNOW MOTLEY & HOLT.
SULLIVAN & CROMWELL.

EXHIBIT TO ANSWER TO QUESTION No. 10

SECTION 22(D) OF THE INVESTMENT COMPANY ACT OF 1940

During the course of the hearings on H.R. 9510 and 9511 a few witnesses commented on Section 22(d) of the Investment Company Act, and some members of the Committee appeared interested in the purpose of this statutory provision.

Section 22(d) permits retail price maintenance in the mutual fund industry. In this sense it is not unlike the fair trade laws which exist in a number of states. Under such laws a manufacturer is permitted to fix the retail price of his product and has recourse to the courts should a dealer engage in price-cutting. However, 22(d) is even more closely analogous to the provisions of the laws of all 50 states which prevent fee splitting by prohibiting rebates of insurance commissions. The effect of these laws is that the sales commissions of particular companies are not subject to price-cutting and to discrimination between customers. As stated below, the necessity for Section 22(d) in the mutual fund industry goes further than in the case of insurance companies.

At the outset it should be made clear that Section 22(d) does not require that all funds charge the same sales price, and as pointed out during the hearings, sales charges range from "no-load" funds to those charging a maximum of about 8½%. It should also be noted that the SEC has had regulatory experience

with Section 22(d) since 1940. On April 15, 1960, a unanimous Commission endorsed the concept and purpose of Section 22(d) :

"Section 22(d) of the Act prohibits a registered investment company, its principal underwriter or a dealer from selling its redeemable shares to any person except at a current public offering price described in the prospectus. *The purposes of the section are to prevent discrimination among purchasers and to provide for an orderly distribution of such shares* by preventing their sale at a price less than that fixed in the prospectus." (Emphasis supplied.) (Investment Company Act Release No. 3015.)

The Necessity for Orderly Distribution

As the Committee is aware, a mutual fund is redeemable at the request of the shareholder. A mutual fund stands ready to buy back the investor's shares at the then current net asset value. This is a right of the shareholder, and there are no sales commissions payable on redemption.

As a result of the redeemability feature shareholder redemptions, which stem from the completion of the investor's long range goals or other circumstances, are currently running about \$2.5 billion per year, or about 6 percent of industry assets. Although mutual funds generally have sufficient cash or other liquid assets to meet current redemptions, the major source of funds for this purpose is new money obtained through sales to new or existing shareholders. Were it not for this source, the mutual fund would have to keep a degree of liquidity which might not be consistent with the fund's investment appraisal of the market at a particular time. Stated another way, the shareholders would suffer in terms of investment performance if the mutual fund was forced to keep a large portion of assets in liquid form to meet redemptions.

The retail price maintenance provisions of Section 22(d) assure an orderly and continuous system of distribution which would not otherwise exist. For a proper understanding of this point it is necessary to examine the alternatives. Those who argue for repeal of Section 22(d), state that following such a repeal there would be a secondary market in mutual fund shares since the shares of a particular fund are "fungible" commodities which would be subject to "free market pricing."

The Alternatives to Section 22(d)

1. Reduction in Sales

Undoubtedly, were Section 22(d) to be repealed, there would be a secondary market in mutual fund shares. Such shares would be traded in much the same way and by the same firms that handle over-the-counter securities generally. Various trading firms would "make markets" in mutual fund shares, and over-the-counter retailers would acquire shares from these wholesalers to meet customer demand. Firms would not tend to specialize in mutual fund shares since the salesman's income would be highly unstable where competitors not specializing in mutual funds could under-cut the firm attempting to specialize in funds. This is exactly the situation which Section 22(d) was designed to prevent. Since mutual fund shares are sold as long-term investments there is little speculative interest in acquiring this form of equity investment. If the mutual fund share became merely another security on the dealer's shelf there would be relatively little demand for it and it would not be sold—especially since it would be competing with a hot \$2 uranium stock or the latest speculative electronics issue.

This is the reason that mutual fund shares, unlike other securities which hold forth the promise of short-term growth, must, like life insurance, depend on selling effort. Furthermore, such selling effort depends on trained salesmen devoting their time with prospective customers in their homes and offices. The sales charge basically compensates the salesman for this time and effort. A salesman who devotes himself to this kind of selling effort is not likely to remain in a business if after he has made a successful sales presentation the customer he has convinced can simply go elsewhere and acquire shares at bargain prices from a dealer's shelf. In this situation the salesman has provided a costly service, in terms of his time, and someone else who does not have similar costs profits from the salesman's work. As mutual fund salesmen tend to leave the field, the over-the-counter dealer will find his sales dropping off since he would not have a sales force specializing in funds. The traditional over-the-counter market cannot insure wide distribution of mutual fund shares. Aside from the fact that this could tend to reduce sales below

redemptions, there is a serious public interest question as to whether short term trading in individual issues should be encouraged at the expense of mutual funds, which would be the result of driving mutual fund salesmen out of the business.

2. Deterioration of Sales Training and Supervision

The ultimate result of a repeal of Section 22(d) would be to drive out of the mutual fund industry the trained professional full-time salesman. The prospective investor who has not heard of mutual funds or who is not motivated to make a long-term investment would thus, as a practical matter, be deprived of the opportunity to make such an investment. To the extent that there were still firms specializing in mutual fund shares, there would inevitably be a decreased emphasis on the training and supervision of salesmen.

In 1963 the Report of the Special Study of Securities Markets spoke of the need for general upgrading of the quality of training and supervision in the securities industry and the "further development of secondary supervisory controls by industry members." A year later, with industry support, the Securities Acts Amendments of 1964 was enacted. This legislation has resulted in improved self-regulatory controls. In many firms expensive automated techniques have been utilized to produce data for regulatory purposes, and firms have become increasingly selective in recruiting salesmen because of the increased costs of training, as well as the desire to avoid regulatory problems. No other retail business carries this kind of self-regulatory burden. This climate of self-regulation would be an early casualty of the repeal of Section 22(d). Price-cutting is obviously not conducive to budgeting for self-regulation.

In the face of the recognition given by the SEC and almost every witness at the hearings to the value of the mutual fund for small and large investors, it is surely not in the public interest to take an approach which would inevitably lead to a deprivation of this form of investment to those for whom it is most suited and which would lead to the deterioration of training and supervision of salesmen.

3. Adverse Market Consequences

As noted above, one of the consequences of relegating the mutual fund share to the shelf of the over-the-counter market dealer would be a dramatic reduction in sales which would impair the industry's ability to meet redemptions. This factor could assume alarming implications in times of market stress. During the period which followed the May, 1962 market break it is generally known that the over-the-counter market became almost completely dormant as many dealers and salesmen left the securities business. On the other hand, although redemptions of mutual fund shares had a moderate increase and sales were somewhat affected by the market break, the existence of dealers and salesmen who specialized in mutual funds assured a healthy level of sales throughout this period. Such sales not only permitted mutual funds to act as stabilizing forces during the period of the break itself but undoubtedly contributed to the recovery of the market as new money came into the general equity markets through the medium of the mutual fund. In fact, as shown in the attached Table, mutual funds have generally acted as stabilizing forces in times of market decline.

Were it not for a strong distribution mechanism mutual funds would not have the ability to act as stabilizing forces in the markets. In the absence of Section 22(d) dealers making the secondary markets in mutual fund shares would, as a matter of economic self-interest, redeem their own inventories, adding to the pressures on the funds caused by redemptions of investors. These dealers would sharply restrict their market making functions, as they generally did for over-the-counter securities in the May 1962 market break. (See *Special Study of Securities Markets of the SEC*, Part 2, p. 789, Appendix VII-H). Thus, investors would have had no market for their shares except the mutual fund itself, and, in the absence of a strong network of distribution the funds themselves might well be forced into net liquidation. The liquidation of their own portfolio securities to meet redemption in a time of market stress would add to chaotic market conditions and increase downward pressures on the stock exchanges instead of exerting the beneficial stabilizing influence that actually occurred in May, 1962, and other times of market stress.

4. Price Discrimination

The repeal of Section 22(d) would create a problem of price discrimination among customers. The SEC has long embraced and endorsed the antidiscriminatory purposes of Section 22(d). In 1958 the SEC promulgated Rule 22d-1, which codified prior Commission interpretations as to what practices constituted dis-

criminary pricing. In the absence of Section 22(d) it would be the unsophisticated customer who would pay the highest price. Sophisticated customers and those purchasing in volume would reap the benefits of their ability to negotiate. The SEC has been critical of securities pricing mechanisms which permit such discrimination. (See *Special Study of Securities Markets of the SEC*, Part 2, pp. 627, 645).

Conclusion

There are a number of compelling questions which must be considered before any serious consideration can be given to any modification of Section 22(d). Some of these are:

1. Would the small investor be deprived of the opportunity to learn of and invest in mutual funds because normal distribution methods would be disrupted by chaotic price-cutting?

2. Would the training and supervision of mutual fund salesmen deteriorate, contrary to the goal of the "protection of investors" contained in the federal securities laws?

3. Would the non-sophisticated investor have to pay more than the sophisticated investor for the same mutual fund shares?

4. Would mutual funds be forced into net liquidation of their portfolios which would have especially serious consequences during times of market stress when dealers making markets in fund shares would redeem their shares with ultimate adverse consequences to the over-all economy?

None of the proponents of the repeal of Section 22(d) have even purported to examine these questions, much less to answer them. We believe that the answers are clear and that repeal of Section 22(d) would not be a responsible course of action in the public interest.

MUTUAL FUND PORTFOLIO ACTIVITY AND INVESTORS PURCHASES AND REDEMPTIONS DURING PERIODS OF MARKET DECLINE

Period	Time	Percent market decline	Mutual fund managers (dollars in millions)		Mutual fund investors (dollars in millions)	
			Portfolio purchases	Portfolio sales	Value of shares purchased	Value of shares redeemed
1. May to October 1946.....	6 months.....	-18.2	\$117.2	\$72.1	\$98.8	\$38.7
2. Korean war outbreak (week ending June 30, 1950).....	1 week.....	-6.9	13.8	6.2	9.0	8.2
3. Eisenhower illness (week ending Sept. 30, 1955).....	do.....	-4.3	16.3	13.0	22.5	10.1
4. Oct. 1-21, 1957.....	3 weeks.....	-7.3	81.6	32.4	46.8	15.9
5. Sept. 1-30, 1960.....	1 month.....	-7.3	255.0	199.1	177.0	64.9
6. January to March 1962.....	3 months.....	-3.3	1,365.1	856.7	922.1	282.4
7. April 1962.....	1 month.....	-5.9	(¹)	(¹)	260.1	91.3
8. January to April 1962.....	4 months.....	-9.0	(¹)	(¹)	1,182.2	373.7
9. May 28, 1962.....	1 day.....	-5.7	35.0	---	4.4	6.8
10. May 3 to July 2, 1965.....	2 months.....	-5.1	1,460.3	1,101.1	518.6	234.3
11. May 14 to June 28, 1965.....	6 weeks.....	-10.5	1,021.0	718.6	(¹)	(¹)
12. Apr. 18 to May 27, 1966.....	do.....	-5.4	1,404.1	1,186.4	673.9	370.3
12. Aug. 15-29, 1966.....	2 weeks.....	-8.7	474.9	463.9	104.8	74.6

Note.—The preceding studies constitute coverage of all periods of important market decline since the end of World War II. The studies were based, in each case, on reports received from substantial portions of the industry with the following percentages of assets of Investment Company Institute's open-end members represented: 1-74.3 percent; 2-96.5 percent; 3-82.5 percent; 4-79.0 percent; 5-98.4 percent; 6-100.0 percent; 7-100.0 percent; 8-100.0 percent; 9-75.0 percent; 10-77.7 percent; 11-83.0 percent; 12-83.9 percent.

¹ Not available. ² Net.

LEXINGTON RESEARCH & MANAGEMENT CORP.,
Englewood, N.J., May 12, 1967.

Subject: Proposed mutual fund bill.

Hon. WILLIAM B. WIDNALL,
House of Representatives,
Washington, D.C.

DEAR MR. WIDNALL: Through our subsidiary, Templeton, Dobbrow & Vance, Inc., our organization has been in the investment counsel business since 1938. We advise portfolios of pension trusts, church funds, trusts, colleges and wealthy

families and individuals. We believe that we are among the 10 largest in the country and the largest in New Jersey. About ten years ago we became actively involved in the management, sponsorship and selling of mutual funds. Our distribution has been handled through our subsidiary, Renyx, Field & Co., Inc., which has approximately 300 registered representatives from Florida to Maine. We have always attempted to conduct ourselves in a professional manner and have been very earnest and serious about our obligation to the public.

We believe that the proposed mutual fund legislation is exceedingly harmful and unfair to us as managers as well as to our representatives and in the long run contrary to the best public interest for the following reasons:

1. The sales charge and front-end load as currently charged is needed to attract intelligent, high minded men to the business of providing financial planning to the American public. The product is too complex to be bought; it must be sold. It is to the advantage of the American economy to encourage the public to save. The contractual plan is the *only* vehicle available to the person of modest means in which he has a fair chance of building an estate for himself. Savings banks and life insurance provide a low compounded rate of interest and give no protection against inflation. The SEC is being shortsighted in their proposals in attempting to protect roughly 15% of the public at the expense of 85%. The majority is not only satisfied but pleased that some salesman at some point encouraged them to start a plan. Those who start a plan and do not complete it may suffer a small *inconvenience* but no more than if they bought any product and sold it soon thereafter. But those who never start a plan to provide for their retirement suffer a *tragedy*. The way to eliminate abuses in mutual fund selling is not to outlaw a plan which has proved effective, but to encourage better men to enter the business. It is my contention that the elimination of the front-end load or the reduction of the sales commission will drive the mutual fund salesmen to the insurance industry where commissions are more generous and need not be revealed to the public. *The net result will be that the average American will be denied an opportunity to build an estate through equity investing.*

2. We are opposed to any legislation aimed at controlling management fees for three reasons:

(a) The industry has on its own scaled down fees as volume of assets has grown.

(b) Our fees have not been excessive since we have been making only modest profits during recent years and suffered substantial losses in the early years of creating our business.

(c) It is contrary to our free enterprise system to have government determine the profitability in a competitive industry.

I know that the issue before you is extremely complex and that it will require a great deal of work and wisdom to produce legislation which is in the best public interest, short and long range, without needlessly hampering an industry which is providing an extremely important and valuable service to the public. If I can be of help to you in providing any facts or otherwise, I will be happy to do so.

I have no way of knowing where you personally stand on this issue, but if you agree with our viewpoint, I would appreciate it if you would communicate it to the House Interstate and Foreign Commerce Committee.

Very truly yours,

JOHN L. SCHROEDER, *President.*

MARTIN NELSON & Co., INC.,
Seattle, Wash., October 4, 1967.

CONGRESS OF THE UNITED STATES,
House of Representatives,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

(Attention W. E. Williamson, Clerk).

GENTLEMEN: We would like to submit for the record, and as testimony if desired by the Committee, a statement in strong opposition to the S.E.C. proposals contained in H.R. 9510 and 9511, Section 12(e), to restrict and regulate mutual fund sales charges.

Our firm, Martin Nelson & Co., Inc. of Seattle is typical of the thousands of smaller broker-dealer firms in the country which will be severely injured by these unreasonable proposals. We represent small business, Main Street U.S.A.,

and not Wall Street or a few large firms headquartered in New York City. I have been in the investment business in Seattle for 34 years and our firm employs 7 to 10 people. We are engaged in helping public investors with their investment problems and in the important task of providing capital for American industry, particularly the smaller local businesses. Mutual funds are a very important part of our work. They have done a fine job for many years for all of our customers who own them.

The S.E.C. has in general done a good job of regulation in the securities industry. However, in this proposal it is attempting to establish, by legislation, compensation ceilings in a very competitive industry. Our industry is not a public utility, a light, water or gas business enjoying a monopoly market. There are some 250 mutual funds available for an investor, some of them with no sales charge. There are numerous broker-dealers through which he can buy them.

Why is it necessary for the S.E.C. to ignore the forces of free competition which have been so successful in American business thus far? The proposed ceilings would, according to careful N.A.S.D. research, force many of the smaller firms in the securities industry out of business and severely curtail the income of most of the industry. The health of small business is of vital importance to the economic well being of the entire country.

There are many severe problems facing Congress and our nation today. Why is this legislation regulating and curtailing mutual fund sales compensation in a very competitive industry and which would injure so many smaller firms, really necessary?

Yours very truly,

MARTIN O. NELSON.

MILITARY ASSOCIATES, INC.,
Little Rock, Ark., October 9, 1967.

Re: H.R. 9510 and 9511.
Hon. JOHN E. MOSS,
House Office Building,
Washington, D.C.

DEAR MR. MOSS: I wish to add my protest to the storm of other protests I have heard throughout the Nation to an effort on the part of the Securities Exchange Commission to reduce or tamper with in any way the commission structure of mutual fund sales.

I understand by hearsay. (an article in Fortune Magazine) that this entire study was instigated and the proposals made at the behest of an employee of the SEC who is or has been a college professor. I suggest that this gentleman has probably never managed a sales organization and has never been confronted with the staggering expense of training, managing and financing the proper caliber of men in a business such as this.

I am head of one of the largest insurance sales organizations in the Nation. We also sell mutual funds through various broker-dealers with whom my men are individually licensed. We do business in over twenty states from California to Florida.

It is a known fact that insurance agencies such as ours and many insurance companies spend many thousands of dollars in training a successful man and bringing him into his full capacity in this work. The sale of insurance and the sale of mutual funds is, under the best of circumstances, a difficult job. People do not voluntarily make investments nor do they voluntarily buy life insurance. It must be sold.

We think mutual funds are the poor man's or the average man-in-the-street's, only workable medium of investment. It has been this flow of money into the market which has given it the support it needed, the lack of which may have resulted in a run on the market with ensuing disastrous results.

It has long been my observation that the mutual funds industry has some of the most poorly trained and poorly managed salesmen of any part of the finance industry in the Nation. I have known many of these people and it is only those who are associated with the big houses such as Merrill, Lynch and Dean Witter that you see the unusually high class, well trained man. I suspect that much of this is due to the present difficulty and expense involved in hiring and training men.

If you comply with the desires of the SEC you will succeed in putting many small people out of business. You will make it impossible to hire and train and

manage high class men of the caliber necessary to handle an important job like this.

Time and space will not permit me to say more, but please record my vigorous protest as well as that of my colleagues.

If you desire additional information or further amplification of my remarks, I shall be glad to furnish same upon request.

Yours very truly,

LEE CAZORT, Jr., *President.*

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Boston, Mass., October 24, 1967.

HON. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee,
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: We have been concerned about Federal Legislation, past, present and future, that strips the States of their traditional supervisory jurisdiction over the securities industry.

The States were the pioneers in securities regulation for the protection of the public and in this respect they are still the pioneers.

In this connection the enclosed resolution was adopted by the members of the North American Securities Administrators Association, Inc., at their Annual Conference held at Banff, Alberta, Canada, on September 14, 1967.

Copies of this resolution are being sent to the members of the Sub-Committee on Commerce and Finance of House Committee on Interstate and Foreign Commerce.

Very truly yours,

FRANK J. DALEY, *Secretary.*

I, Frank J. Daley, hereby certify that I am the duly elected Secretary of North American Securities Administrators Association, Inc.

I further certify that at a meeting of the members of the Association duly called and held at Banff, Alberta, Canada, on September 14, 1967, the following preambles and resolutions were duly adopted

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.

FRANK J. DALEY, *Secretary.*

H. O. PEET & Co.,
Kansas City, Mo., June 20, 1967.

HON. LARRY WINN, Jr.,
House of Representatives, Washington, D.C.

DEAR LARRY: In regard to H.R. 9510 which is concerned with legislative proposals of the S.E.C., I presume that you will receive certain information from the securities industry which will have a general bearing on your voting decision. I thought it might be helpful to you to have some specific information on

our understanding of the effects of the proposed legislation on our operations. Although our main office is in Missouri, our Kansas City, Kansas branch is the only member firm office in that city and we are glad to say serves many of your constituents. In addition several of my partners and many of our employees reside in Johnson and Wyandotte Counties.

We recently made a thorough analysis of the effect of the S.E.C. legislative proposals on our 1966 operations. As of December 31, 1966, H. O. Peet & Co. had been in business 29 years, had reported capital of \$2,677,328, employed 44 registered representatives and 46 other employees plus 9 partners. We were operating 4 branch offices and served more than 10,000 clients.

In 1966 our gross commissions were broken down as follows:

	Percent
Municipal bonds-----	1.7
Over-the-counter gross commissions-----	7.2
Mutual funds gross-----	23.7
Listed commission business-----	65.0
Underwriting gross-----	2.4

Included in the figures above representing listed commissions is a considerable amount of business directed to us by the various mutual funds.

As a businessman, you can well appreciate the fact that it is oftentimes the "plus business" that makes the difference between profit and loss in any given year. We have approximately half a million dollars invested in Exchange memberships. The commissions which we receive from mutual funds frequently represent the difference between operating on a break-even basis, at best, and making a satisfactory return on our investment. The conclusion to be reached from the S.E.C. report would be that certain institutions (mutual funds) should essentially be prohibited from doing business with firms which raise capital for them (sell their shares) and that all this business should be channeled through the huge Wall Street firms. The implication here is that they are entitled to this business by virtue of their size whereas we should be deprived of this business specifically because we show our confidence in these financial institutions by recommending investment in them. Carried to its logical conclusion, this would imply that the nation would be better off with only one brokerage firm through which everyone must execute their orders. This firm, of course, would be severely regulated by a federal agency to a point where it ultimately operated on a non-profit basis. (Perhaps another Post Office department?) This could hardly be classified as engendering the profit motive concept of economic growth. In fact, it would in many ways be like your having a building inspector tell you that you could not purchase materials from a particular supplier because that supplier had contracted with you to build a building for him. Surely nothing could be further from your actual desires than such a dictum.

Assuming the S.E.C. proposals were in effect during this period, the reduction of our net profit after partners' salaries and interest would have been minus 121%. If only those proposals concerning N.Y.S.E. volume discounts and any give-ups were in effect, the effect on our net profit would have been minus 96%.

We would unquestionably have to reappraise our entire operation in the event that the S.E.C. legislative proposals become law. For example it would become difficult if not impossible to attract new capital into the firm. There would be no retained earnings and who wants to put capital into a profitless operation? I think we would be forced to consider merger, liquidation or consolidation and the net effect would be to greatly reduce the investment services now available to the public we serve.

Aside from the immediate impact on profit, these legislative proposals would naturally affect our training program. For example we now have six men in training and in most instances our trainees are qualified as soon as possible (3 to 6 months) in the sale of mutual funds under partial registration with the N.Y.S.E. and a great deal of their time the first year or so is devoted to the sale of mutual funds. We have found that this is the only possible way they can come anywhere near making a living. I am sure our mutual fund sales would decline on a smaller sales charge but how much I don't think we can even begin to estimate.

This is an important part of a total training program which is necessary to develop fully qualified registered representatives. This is precisely the part of

our over-all effort which best serves the smaller investor who is usually much better off owning mutual fund shares than dabbling in low priced speculative shares. It is these smaller investors who would suffer most from lack of service by curtailment of training programs, closing of smaller offices and liquidation of smaller investment firms. In addition I believe that our larger producers would definitely shy away from sale of mutual fund shares because of reduced commissions. After all it is profit potential that attracts the best producers and in order to compete with other industries and professions we must be able to compete in the vital area of compensation.

On an over-all basis these legislative proposals appear to be aimed in essence at the revenue side of the securities business. While the industry has long recognized and lived with a vast variety of regulation it is also a highly competitive industry and therefore appears unsuited to a regulatory approach more applicable to possible monopolies. In fact these proposals would more likely create a monopolistic situation because only a few of the very largest companies in the business could operate profitably. They would dominate the industry and tend to concentrate in the larger cities and give less service in smaller communities. As a businessman I am sure you can understand the impact of a sudden loss of 40% of your gross and no reduction in your cost of doing business.

It is my understanding that hearings begin this week in the Senate where this bill is known as S. 1659. We have not yet been informed about the House schedule but thought you might find this information useful in the near future.

As to my own interest and qualifications, I first entered the securities business in 1934 in Denver, Colorado. I spent 14 years with Waddell & Reed as an officer, director and portfolio manager. I joined H.O. Peet in January, 1966 and became a partner in April, 1967. In all those years I have never seen a regulative proposal less calculated to serve the public interest than a mere reduction in sales charges. I think this would have about the same effect as reducing haircuts from \$2.25 to \$1.25. There soon would be no barbers.

With best wishes for your continued success, I remain

Sincerely yours,

ROBERT E. GUNN.

WADDELL & REED, INC.,
Kansas City, Missouri, July 28, 1967.

HON. LARRY WINN, JR.,
House Office Building,
Washington, D.C.

DEAR MR. WINN: Thank you for your letter of June 15th, and your request that I again write you with the possibility that this letter might become a part of the hearing record on H. R. 5910. I cannot argue with the overall intention of the Security & Exchange Commission in their desire to further benefit the small investor using the open-end investment trusts. I believe that the regulations on our industry have helped to develop the mutual fund industry, and I do not object to the numerous and strict regulations that are now in effect.

Two of the three main areas of the bill cover management fees, and sales commission. In both areas competition is keen. Various funds make a sales point of how their fees and expenses are being progressively reduced and state their position in the industry. Sales commissions run from nothing in the no-load funds to 8.75%. In each area there is competition, a choice.

The third area of the proposed legislation regards "contractual plans." Sales costs in many contractuals are actually less than afforded to the cash buyer! I use a plan myself because it enables me to use relatively small amounts of money, gives me an objective, and supplies me with the discipline I need. The terms of a contractual plan are so carefully spelled out for the buyer that they know an early liquidation will not be to their advantage. Amazing sums of money have been accumulated by people using contractual plans, and it has helped our registered representatives to be able to sell and service the small but systematic investor. Without such programs we would simply have to confine our work to those with lump sums of cash. Here particularly is a place where the suggested legislation would work to the disadvantage of the wage earner and the average sales person.

Since my particular job is that of hiring, training and supervising registered representatives, I am quite aware of their average earnings and the work they do

for their investors. Our industry is in no way an opportunity to make a fast dollar, but rather requires a career commitment in order to make even a respectable living.

I do not feel that the Security & Exchange Commission has sufficiently considered the cost involved in selling our product, and it seems to me that the opposite of what the Security Exchange Commission wants to accomplish will result if the legislation is passed in its present form. The Security Exchange Commission has admitted that the small investor who has employed the mutual fund method of investing has benefited substantially, but they do not realize how expensive it is for us to sell and service the accounts. If the present legislation is passed, it is my opinion that the large investor and the high positioned people in the industry will be unaffected, but the average mutual fund salesman and the small investor will be adversely affected.

The investment business entails as much or more risk for those of us who are in the business as it does for the investor. It is vitally important when you accept these risks as a part of your life that there at least be the possibility of some rewards. The Security Exchange Commission legislation would reduce the opportunity to make money that the commission structure would be dealt a shattering blow. It is almost impossible to go the fixed cost route.

Wages and costs have constantly increased throughout our land. By automating bookkeeping, and dealing with larger amounts of money, our mutual fund companies have, as their records reveal, progressively decreased their internal management fees and expenses. In the same period our expenses have progressively increased, and the industry has *not* passed this increased cost on to the investor. When in area after area it has been necessary to increase prices due to wage demands, fringe benefits, etc., the industry has a splendid record of actually reducing management fees.

Basically the agitation for this legislation has not come from our investors. We are in a highly competitive market. Our charges and costs are no more than are needed. The banks, insurance companies, savings & loan associations, etc., are able to far more aggressively solicit investment money than we are. I feel that the work we do is honorable, of long term benefit to the money market in the United States, and offers one of the best methods for the general public to be involved in our capitalistic free enterprise system.

Sincerely yours,

GEORGE D. CLELAND, JR., *Division Manager.*

HON. LARRY WINN, JR.,
House of Representatives,
Washington, D.C.

OVERLAND PARK, KANS., *May 25, 1967.*

DEAR MR. WINN: The SEC Mutual Fund Bill has proposed that Congress give certain authority to the Securities and Exchange Commission which would eliminate, restrict, and change certain established operations, policies, and procedures of the mutual fund industry. Although I am unopposed to beneficial elimination, restrictions or change, I cannot concur with the Bill as presented. The following deserve additional comment:

1. *Elimination of front-end load contractual plans.*—This medium of investment is under criticism primarily due to the placing of a large part of the sales charge in the first twelve investments. Contractual Plans are a long-term investment which are sold by salesmen who must receive a commission sufficient for his labors. If sales charges and commissions were spread out over the life of the plan it would be physically impossible for the salesmen to earn \$600 per month and give the service necessary to his clients. (\$25.00 per month from 400 people at a commission rate of 6%). In addition, the Contractual Plan offers to the small investor the opportunity to share in the wealth of his nation through the inherent diversification of a mutual fund and its professional management which may not otherwise be available to him.

2. *Restriction of sales charges on lump sum investments.*—The bill as proposed seeks to set an arbitrary 5% of the net investment as the maximum sales charge. This proposal is based on the NASD's "5% mark-up policy" on listed and unlisted securities. But, they fail to state that the NASD's 5% is charged both on the

purchase and on the sale of a security. Mutual funds have varying percentages for sales charges, normally $8\frac{1}{2}\%$ only on the purchase. There is normally no charge for redemption.

3. *Restriction of management fees to a level called "Reasonable."*—The Bill proposes to restrict management fees to a reasonable amount. Therefore, current fees must be unreasonable. Yet, no definition of "reasonable" is given nor is any criteria given to determine what is and what is not reasonable. To determine a reasonable management fee would require a constant review of individual situations and I doubt whether such a system of review is possible. If constant review is not made, then a new standard or the current standard will become generally acceptable to the SEC and reasonable. The sole authority to determine what is reasonable to an individual manager or an industry will rest with the SEC. No avenue of joint agreement is available.

4. *"Change" is a big word.*—Change does not consist of just the present but also includes the past, and the future. It must also include the why, when, where and how of the change. To date the Mutual Fund Bill includes the past and the present of the mutual fund industry. The future is unknown. It also includes the SEC's why, the SEC's when, the SEC's where and the SEC's how. The Bill's presentation does not include the investors, the general public or the mutual fund industries viewpoints or feelings. The Bill does indicate the SEC's viewpoints, feelings and recommendations.

The above are some of my reasons for opposing this Bill, and I would appreciate you conveying my thoughts to the appropriate Committee.

A reply at your earliest convenience certainly would be appreciated.

Sincerely,

ROBERT L. COX.

LONG BEACH, CALIF., July 17, 1967.

Subject: H.R. 9510 (Investment Company Amendments Act of 1967).

Congressman HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: Having read and evaluated the SEC's legislative proposal to regulate the Mutual Funds' sales charges and management fees, I am prompted to emphatically oppose this legislation.

The SEC's proposal to impose rate regulation by litigation or threat is unsound. To place effective power to set sales charges and management rates solely in the hands of the SEC, Investors and Federal District Courts, would bring about chaotic business conditions in the Mutual Fund business.

In my opinion, Congress should not entertain any proposal which would have such a devastating effect on the incentives of those who are already in the business or who might want to enter it.

I urge that you legislate against this bill.

Respectfully yours,

KENNETH H. HOLDEN, Mutual Fund Sales Representative.

SAN JOSE, CALIF., July 17, 1967.

Subject: H.R. 9510 (Investment Company Amendments Act of 1967).

Congressman HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce, Committee, House Office
Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: As a sales representative of many years and presently an employee of a large mutual fund, I am writing to express my concern over the proposals being made by the Securities and Exchange Commission. Their proposed control and or regulations for maximum sales loads and management fees are particularly perplexing.

First, I wonder why mutual fund sales charges should be subject to Government control. These charges are disclosed to the public, and competition being an important part of successful selling dictates to a great extent whether or not a customer chooses to buy. Funds do not represent the exclusive way of invest-

ing in securities, but the 47% cut in maximum sales charges recommended by the S.E.C. would make it unprofitable to solicit the small investors who would not otherwise invest in securities. Where individual securities are often sold by telephone, mutual fund sales are sold by time-consuming personal interviews where the small sales sometimes require more of a salesman's time than larger transactions. A mutual fund investor, regardless of the size of his investment, receives many services for his sales charge including professional management.

Our particular company distributes part of the sales charges to the division manager, district manager, and the salesman, all of whom must be able to finance their operational costs and earn a profit. For these reasons it is hoped that you will not act favorably toward these S.E.C. proposals.

Sincerely,

RICHARD L. POPE.

PIERMONT, N.Y., October 23, 1967.

Representative JOHN E. MOSS,

Chairman, House Subcommittee on Commerce and Finance, Interstate Foreign and Commerce Committee, Washington, D.C.

DEAR SIR: I would like to contribute my views on mutual funds to your committee hearings and for the record. I am an investor in mutual funds and also have done personal research in the field.

I am both pained and distressed by some of the SEC charges and proposals made before Congress and your committee. If enacted into law, they would be a major disservice for the public as a whole. They would be detrimental to many mutual fund investors, such as my family and our savings in mutual funds. Among other things, it could result in a loss of savings for my children's college in the future.

I neither work in the mutual fund business nor in any way have a vested interest in the industry (except for my relatively modest investments in a few funds). I therefore would not benefit directly as a result of legislation that would either help or hinder the mutual fund industry. I am a full-time self-employed professional writer.

I have four main points to make.

First, the much publicized but highly improbable statement made by Mr. Cohen of the SEC before your committee that a random investment in stocks in past years would have done as well as an investment in an average performance mutual fund: This is poppycock.

I personally have done much better with my savings in mutual funds than I formerly did when I invested exclusively in the stock market. In fact, I wish I had heard about mutual funds a long time ago. But I had been put off of them by, among other things, the critical University of Pennsylvania study made for the SEC back around 1961 or so. (And some of the dire things that report had to say about funds certainly didn't work out later for me.)

I used several large and well-known Wall Street brokerage houses and their recommendations when I invested in individual stocks. In 1964 I began switching from stocks to mutual funds. My fund investments have done much better than stocks ever did for me.

I enclose the record of all my actual investments in one fund since 1964. You can use it as an actual example, if you wish, of a typical investor in funds.

I have invested, all told, in four different funds. I'll be glad to show you my actual records in each of the others, too, if you wish.

In addition to my personal experience being an actual example that contradicts Mr. Cohen's statement, it simply doesn't make sense to say that any person could have done better blindfolded in the stock market than in mutual funds. Such a statement is based on a hypothetical case, and it evidently lumps the performance of all different mutual funds together (in a scrambled mix like apples and oranges compared with plums and prunes), as the mutual fund industry has surely pointed out. It therefore is a highly misleading thing to say. He really should have known better.

Besides, Mr. Cohen's statement makes no allowance for the fact that people being people often act in funny ways that are often unpredictable. Moreover, do you, for example, know of any person who would put his hard cash on the line

in stocks chosen at random, or with a dartboard. (Many people would probably do better if they did.)

A real test would be an actual comparison of how typical investors (if there are such animals) fared in the stock market versus the actual performance results of people in mutual funds. The mutual funds results are an open record, as you well know. Stock investments are not, but then perhaps Mr. Cohen, or Professor Samuelson of MIT, would give you their actual monthly stock broker accounts so you could compare what a supposedly informed investor has done in stocks versus the actual performance of mutual funds. I'll bet that on net balance the funds have done pretty well by comparison, if not better.

For that matter, I'll match the return on my mutual fund investments, as documented on the enclosed form, with the stock market return received by either of those men during the same period. Or with any other person you may choose at random. My savings in this particular fund, for example, have increased in value by about 25 to 30 percent just this year (1966).

Thus, my first point; that the average person very likely and very probably can and is doing as well, if not a lot better, with his money in mutual funds than he could do in the stock market.

Secondly, the much criticised contractual, or "front-load" plan, should be modified but not abolished.

I personally would not invest in a contractual plan unless I had holes in my head. However, I know people who do invest in them who, very frankly, would never be saving except that they are forced to via a binding contractual plan. As a result it is not at all unlikely that they and their kids will be financially a lot better off in the future, compared with how they would be if there was no contractual plan for them to save with.

Abolishing the plan now might not affect them, to be sure. But it would prevent other people from starting similar savings plans in the future. Again, people are funny animals and some of us may not do what is the most sensible and logical thing economically (or otherwise), we may not always do what is best for us, and allowances should be made for human behavior.

On the other hand, the front-load charge on a contractual plan may well be a rather stiff price to pay in advance. Perhaps the lion's share of the sales load charge could be spread over two years, rather than one year as now. And something probably should be done for people who are forced to cancel out on a contractual plan after being in it for only a few years. Some refund allowance should be made on the excess sales charge they had paid in.

In addition, something also could be done to cut down on some rather dishonest sales practices by *some* salesmen selling the contractual plan, though news of this kind of skullduggery may not have reached the SEC.

Conclusion: Outlawing the contractual plan would be a disservice to a lot of people, and particularly to middle-income people who can really benefit from it over the long haul. It should, however, be reformed.

Third, I oppose a reduction in the maximum allowable management fee paid to mutual fund managers. Cutting the fee is a penny-wise and pound-foolish thing. A person like myself might save all of \$5 to \$10 a year as a result of the SEC's terrific and unrelenting campaign to prevent what they think may be price gouging in the industry (though I seriously doubt that it amounts to that much profiteering).

Cutting down on the fee would, I strongly fear, cut down on the service and performance that people like myself get from our mutual funds. The funds would have less to spend for analysts and for other top-flight people to watch their investments. That not only would be a disservice to the many, many people who invest in funds, but it would end up costing a lot of us much more money than the mere \$5 to \$10 each of us would save on our fees each year.

Sure, there are probably a few funds who are overpaid and underworked, and some fund people may make more money than they deserve. (That statement can go for lots of other groups, such as doctors, lawyers, and government employees.)

There are also many crack mutual fund people who deserve every extra dollar they make in the business, within reasonable limits, of course. Or maybe with no limits so long as they continue to rack up the excellent performance results that the better funds have shown in the last couple of decades. I have absolutely no objection to any person being paid a good price for his efforts and job done. Clamping down, however, on the allowable management fees puts a damper on intelligence, initiative and incentive (and I speak as a liberal Democrat and former Democratic committeeman). It's just not a good thing to do, and it's incomprehensible since it's the sort of thing that rewards mediocrity.

If the SEC believes that some mutual funds give a dollar's value for a dollar earned, it ought to single out such funds rather than punish all for the sake of a few. It should use a rifle and not a shotgun.

Fourth, I am opposed to a reduction in the sales load charge from the present 9 percent down to 5 percent. This is another penny-wise and pound-foolish proposal. Again, it makes no allowance for the quirks and unpredictable behavior (and inertia, among other things) of people. (Literally speaking therefore, it is an inhuman proposal.)

And, pray tell, what good really would this proposal do? And why five percent? Why not four or seven, or eleven, for that matter?

If you cut sales commissions, I'd say that by and large the very best salesman in the field would leave for greener pastures. They would mostly be the fulltime salesmen in the business now, rather than the moonlighters and parttimers. Any good salesman can and probably will go to another field where he can make more money. And that would mean a loss for the public as well as a loss in sales for the mutual fund industry.

Now, of course there are salesmen and there are salesmen. Nobody but nobody can tell you in advance for sure which salesmen will leave the mutual fund field if sales commissions are so drastically reduced. I have met and known several mutual fund salesmen, including some surprisingly bright and knowledgeable ones, as well as one who was a stumblebum.

By and large, however, the character, morality, and intelligence of mutual fund salesmen taken as a whole are probably no different from the character traits, morality, and intelligence of many other people, including all the lawyers of the SEC, all congressmen, all businessmen and all nonprofit social workers, too.

Suppose that the American people decided en masse to cut the salaries of Mr. Cohen and the people in the SEC, and all Congressmen, such as yourself, by a flat 45 percent or so, or by the same sharp reduction that Mr. Cohen recommends for mutual fund salesmen.

Which employees of the SEC and which congressmen are most likely to quit and get other, better-paying jobs? You very likely would lose some of our very best SEC people and our very best congressmen. Why should such people work for so much less money? They are usually the ones who would earn, if not command, more money in other jobs.

That may not be a perfect analogy, but it can give you an idea of which caliber salesmen are most likely to leave the field if you cut the sales charges.

As a result, the mutual fund savings of literally millions of people, such as myself, would probably suffer. My kids could conceivably end up with less money for college in the future and I don't welcome that prospect. What hurts the mutual fund industry in this case can hurt its customers; i.e., the public.

That is not to say, by the way, that I oppose all supervision and watchdog activities of the government, through the SEC. Of course not. However, there are times, alas, when we need protection from our friends rather than our enemies.

To sum up, I strongly oppose two of the SEC mutual fund proposals made before Congress, and I feel that the third one to abolish contractual plans be modified rather than abolish this mutual fund purchase plan.

And I hope that this letter can be made a part of the records of your hearings.

Sincerely yours,

ARTHUR M. WATKINS.

DREYFUS FUND INC.

[Account of A. M. Watkins]

Date	Amount of—				Shares			
	Payment	Income dividend	Capital gain	Price per share	Purchased		Total owned	
					Full	Part	Full	Part
1964								
Dec. 1.....	\$300. 00	-----	-----	\$22. 85	13	129	13	129
Dec. 12.....	500. 00	-----	-----	22. 92	21	815	34	944
Dec. 31.....	400. 00	-----	-----	22. 96	17	422	52	366
Total.....	1,200. 00	-----	-----	-----	-----	-----	-----	-----
1965								
Jan. 15.....	46. 61	\$ 5. 75	\$ 40. 86	21. 18	1	965	54	331
Feb. 16.....	200. 00	-----	-----	23. 08	8	666	62	997
Apr. 13.....	200. 00	-----	-----	24. 07	8	309	71	306
Apr. 29.....	-----	7. 13	\$ 10	-----	-----	-----	71	626
June 15.....	150. 00	-----	-----	22. 91	6	547	78	173
July 29.....	-----	7. 82	\$ 10	21. 11	-----	310	78	543
Aug. 3.....	100. 00	-----	-----	23. 67	4	297	82	840
Aug. 17.....	100. 00	-----	-----	23. 98	4	170	87	010
Sept. 15.....	100. 00	-----	-----	25. 17	3	973	90	983
Oct. 15.....	50. 00	-----	-----	26. 56	1	883	92	866
Nov. 4.....	150. 00	-----	-----	27. 12	5	531	98	768
Nov. 30.....	100. 00	-----	-----	27. 59	3	625	102	393
Dec. 27.....	100. 00	-----	-----	28. 25	3	540	105	933
Dec. 31.....	100. 00	-----	-----	28. 38	3	524	109	457
Oct. 26.....	-----	9. 79	\$ 10	-----	-----	-----	-----	-----
Total.....	1,350. 00	-----	-----	-----	-----	-----	-----	-----
1966								
Jan. 28.....	100. 00	-----	-----	28. 91	3	459	-----	-----
Jan. 4.....	43. 14	93. 94	-----	26. 57	3	314	116	230
Mar. 1.....	50. 00	-----	-----	29. 14	1	716	117	946
Mar. 14.....	100. 00	-----	-----	27. 74	3	605	121	551
Apr. 15.....	-----	12. 16	-----	27. 29	-----	446	121	997
July 15.....	Split	12. 30	-----	-----	-----	-----	243	994
-----	-----	. 05	-----	-----	-----	952	244	946
Oct. 14.....	14. 10	. 06	-----	11. 60	1	767	246	213
Nov. 10.....	100. 00	-----	-----	13. 34	7	496	253	709
Nov. 18.....	150. 00	-----	-----	13. 38	11	211	264	920
Dec. 29.....	200. 00	-----	-----	13. 80	14	493	279	413
Dec. 30.....	200. 00	-----	-----	13. 81	14	822	293	995
Total.....	900. 00	29. 39	67. 60	-----	-----	-----	-----	-----
1967								
Jan. 5.....	96. 99	. 10	. 23	13. 34	6	896	300	791
Mar. 28.....	100. 00	-----	-----	15. 52	6	443	307	234
Apr. 28.....	100. 00	-----	-----	16. 04	6	234	-----	-----
Apr. 27.....	-----	18. 43	-----	14. 48	1	225	314	723
July 27.....	-----	-----	-----	15. 34	1	231	315	954
Sept. 18.....	100. 00	-----	-----	16. 77	5	963	321	917

1 11 cents per share.

2 78 cents per share.

3 Per share.

\$3,750 total invested since Dec. 1, 1964.

Total value of shares Oct. 23, 1967—\$4,850.

Based on price of \$15.03 on this date.

(Whereupon, at 12:30 p.m., the subcommittee was adjourned.)

