

other hand their affiliated persons, principal underwriters, promoters, and their affiliates. The Act also should state explicitly that this basic fiduciary standard also extends to compensation received by such persons for services furnished to investment companies. Accordingly, the Commission recommends that the Act be amended to provide expressly that:

(1) All compensation received by any person affiliated with a registered investment company (including investment advisers, officers, directors, and trustees, any person serving as its principal underwriter and any affiliate of such persons) for services furnished to the investment company be reasonable;

(2) the standard of reasonableness be applied in the light of all relevant factors, including the fees paid for comparable services by other financial institutions with pools of investment capital of like size and purpose such as pension and profit sharing plans, insurance companies, trust accounts, and other investment companies; the nature and quality of the services provided; all benefits directly or indirectly received by persons affiliated with an investment company and their affiliated persons by virtue of their relationship with an investment company; and such competitive or other factors as the Commission may by rule or regulation or, after notice and opportunity for hearing, by order determine are appropriate and material in the public interest;

(3) The application of this standard be unaffected by either shareholder or directorial approval of advisory contracts or other compensation arrangements;

(4) Recoveries in actions to enforce the statutory standard of reasonableness be limited to that portion of the compensation deemed excessive which has been paid or accrued within 2 years of the date on which the action is instituted; and

(5) The Commission be empowered to institute actions to enforce the statutory standard of reasonableness and to intervene as a party in any private action brought to enforce that standard.

An express statutory standard of reasonableness would not preclude investment advisers and other persons affiliated with investment companies from realizing profits on each type of service they furnish to such companies. Indeed such a standard would recognize the need to retain economic incentives for those who manage investment companies. However, an express statement in the Act of this basic fiduciary standard would make clear that those who derive benefits from their fiduciary relationships with investment companies cannot charge them more for services than if they were dealing with them on an arm's-length basis.

The statutory requirement of reasonableness would apply to all forms of compensation paid by all investment companies to their affiliated persons, principal underwriters, and affiliates of such persons. This would include all forms of compensation paid to officers, directors, advisory board members, trustees, sponsors, investment advisers, principal underwriters, and controlling persons of both externally and internally managed companies as well as persons or organizations with which such persons are affiliated. Although advisory fees are the principal form of managerial compensation in the investment company industry, externally managed companies frequently pay fees for various nonadvisory services to principal underwriters, trustees, business managers, and sponsors who, like in-

vestment advisers,<sup>195</sup> are likely to have close and dominant relationships with such companies that preclude arm's-length bargaining. Similarly, the relationships between internally managed investment companies and their officers and directors are not arm's-length relationships, and the managerial compensation paid by the internally managed companies may be influenced more by the pattern of such compensation in the externally managed sector of the industry than by arm's-length negotiation or competition.

Under the proposed statutory amendment, reasonableness would not be measured merely by the cost of comparable services to individual investors or by the fees charged to other externally managed investment companies. Instead, the standard of reasonableness would require that all factors relevant to such a determination for a particular company be taken into account, including costs of management services to internally managed investment companies and the costs of investment management services provided to pension and profit-sharing plans and other large nonfund clients. In determining the reasonableness of management compensation under the statutory standard, not only the nature and extent of the services performed but their benefit to the investment company and its shareholders would be relevant considerations. Thus the sustained investment performance of a company would be an appropriate consideration in evaluating the reasonableness of its adviser's compensation.

Similarly, the reasonableness of advisory fees and other management compensation would be evaluated in the light of all benefits directly or indirectly received by the investment company managers by virtue of their relationship with the companies. Among these benefits are brokerage commissions paid by investment companies for the execution of portfolio transactions to brokerage firms with which investment company managers are affiliated. Since brokerage commissions for executing transactions on national securities exchanges are fixed by exchange minimum commission rate schedules, the standard of reasonableness to be incorporated into the Act would not directly affect such commissions. But the benefits obtained by investment company managers from such commissions paid by investment companies under their supervision could, in some circumstances, be a factor in determining the reasonableness of the advisory fees and other compensation received by such managers from the company. This would be so, for example, if brokerage business with the company were more profitable than brokerage business with other accounts of like size and type because the affiliated broker would not incur the same expenses of obtaining and maintaining the investment company account as would a broker who had no special relationship with the company's management. In such cases the "excess" profit could be a factor in judging managerial compensation, but the application of the standard of reasonableness would not deprive investment company managers from realizing profits usual in the brokerage business for brokerage services provided to their investment companies in addition to compensation for other services they furnish the company.

The Commission's recommendation that the Act provide expressly that shareholder and directorial approval of advisory contracts or other compensation arrangements shall not affect the application of the standard of reasonableness is designed to make inapplicable to

<sup>195</sup> see pp. 92-94, *supra*.

investment company management compensation the judicial decisions which have held that such action by shareholders or disinterested directors changes the standard from fairness to "waste." Although these decisions were not reached in connection with a statutory standard of reasonableness such as proposed by the Commission, the ineffectiveness of shareholder and directorial approval as a restraint on management compensation in the investment company industry makes it important to eliminate any doubt on this question. To permit such action to impede the operation and enforcement of a Federal standard of reasonableness, as it has in the case of standards imposed by State law, would be wholly inconsistent with the reasons for and the purpose of such a statutory standard.

The statutory standard of reasonableness would be enforceable by the Commission in the same manner as other provisions of the Act. The Commission would be able to bring actions in the United States district courts to enjoin acts or practices in violation of the standard and otherwise to enforce compliance with it.<sup>196</sup> In addition, well-established judicial precedent under the Federal securities laws makes clear that violations of the standard would give rise to private rights of action on behalf of an investment company.<sup>197</sup> As the Supreme Court has noted with respect to such enforcement of the Commission's proxy rules under the Exchange Act:

private enforcement \* \* \* provides a necessary supplement to Commission action. As in anti-trust treble damage litigation the possibility of civil damages or injunctive relief serves as a most effective weapon in enforcement.<sup>198</sup>

The right of the Commission as well as investment company shareholders to take action against violations of the statutory standard of reasonableness is essential to effective enforcement. However, considerations of fairness to the individuals and organizations that furnish their services to investment companies make it appropriate to limit recoveries in such actions to that portion of the compensation deemed excessive which has been paid or accrued within two years before the date suit is instituted.

This limitation reflects the need of investment advisory organizations, many of which are publicly owned, for a measure of security with respect to the revenues and earnings they receive from the investment companies they serve. For many advisory organizations the compensation received from mutual funds under their management is the primary source of their revenues and earnings.

Absent a limitation on recoveries of compensation subsequently deemed to have been paid in violation of the statutory standard of reasonableness, the liabilities created by such a statutory requirement might operate with undue harshness on those obligated to comply. This is particularly so because a determination of unreasonableness must depend on a variety of particular circumstances and delineation of the standard necessarily must await its application in individual cases.

<sup>196</sup> Act see. 42(e).

<sup>197</sup> See, e.g., *Matheson v. Armbrust*, 284 F. 2d 670 (C.A. 9, 1960), *certiorari denied*, 365 U.S. 870 *Fratt v. Robinson*, 203 F. 2d 627 (C.A. 9, 1953); *Hooper v. Mountain States Securities Corp.*, 282 F. 2d 195, 201 (C.A. 5, 1960); *Slavin v. Germantown Fire Ins. Co.*, 174 F. 2d 799 (C.A. 3, 1949); *Fischman v. Raytheon Mfg. Co.*, 188 F. 2d 288 (C.A. 2, 1951); *Baird v. Franklin*, 141 F. 2d 238 (C.A. 2, 1944); *certiorari denied*, 323 U.S. 737; *Goldstein v. Groesbeck*, 142 F. 2d 422, 426-27 (C.A. 2, 1944), *certiorari denied*, 325 U.S. 737; *Kardon v. National Gypsum Co.*, 69 F. Supp. 512, 513-514 (E.D. Pa., 1946).

<sup>198</sup> *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1963).

The two year limitation on recovery of compensation paid by investment companies prior to the institution of suit would not affect the jurisdiction of the courts to enjoin for the future the payment of compensation deemed violative of the statutory standard. Moreover, the limitation would apply only to suits brought to enforce the express statutory standard of reasonableness. It would in no way derogate from the remedies provided by existing law to recover excessive compensation paid by investment companies. If under applicable State law standards or under the existing provisions of the Act such compensation would be considered excessive or unlawfully paid, the right of recovery would be unaffected by the Commission's proposed amendment. However, under no circumstances could there be double recoveries of compensation paid.

The Commission's recommendation that it be permitted to intervene as a party in all shareholder suits brought to enforce the statutory standard of reasonableness and any settlement of such actions would provide investment company shareholders with a measure of assurance that their interests are being protected adequately by the shareholders who have undertaken to prosecute the action on behalf of the company. It would also protect investment company managers against groundless suits that might be brought for the benefit of a complaining shareholder and his counsel rather than for the benefit of the investment company and the entire body of shareholders whom they purport to represent.

*(b) The possible alternatives*

In the Commission's view, the adoption of an express statutory standard of reasonableness with respect to management compensation in the investment company industry is the most feasible way of affording much needed protection to investment company shareholders with minimal disruptive effect on the existing industry structure. Before arriving at its recommendations the Commission had considered carefully a number of other choices for providing such protections. These ranged from proposals for strengthening the existing safeguards of disclosure, shareholder voting rights and the role of unaffiliated directors to those for complete disaffiliation of the funds from their adviser-underwriters and the compulsory internalization of the management function. The former proposals were rejected as being wholly unrealistic, and, in the Commission's view, the latter appear too sweeping at this time.

The strengthening of disclosures material to an evaluation of the reasonableness of advisory fees and other forms of management compensation has been, is, and will continue to be important in the administration of the Acts. Improvements have been made in such disclosures in proxy statements soliciting shareholder approval of advisory contracts<sup>199</sup> and in annual reports filed with the Commission.<sup>200</sup> To the extent that such disclosures allow investment

<sup>199</sup> For example, under some circumstances earnings statements of advisory organizations have been included in a number of such proxy statements.

<sup>200</sup> Form N-1R, the form on which most management type investment companies file annual reports with the Commission, was revised on Jan. 25, 1965, to provide for disclosure of the compensation received from all investment company sources both by officers, directors, advisory board members, and employees of the reporting company and by other affiliated persons affiliates of officers, directors and advisory board members, investment advisers, principal underwriters; and certain shareholders of the company. These disclosures are designed to provide a comprehensive picture of the compensation paid to the top managers of an investment company, whether paid by the reporting company, other investment companies or by their investment advisers, principal underwriters or brokers. Disclosures of compensation received by investment advisers, principal underwriters and brokers are required if 50 percent of the organization's gross income was derived from investment company sources. Items 1.12 and 1.13 of Form N-1R; Investment Company Act Release No. 4151 (Jan. 25, 1965).

company shareholders and unaffiliated directors to become more aware of the Compensation paid to the managers of their companies and discourage cost-raising departures from the industry pattern, they serve a highly useful function. But the lack of practical alternatives available to shareholders who question the fairness of existing or proposed compensation arrangements make shareholder approval of advisory contracts a wholly inadequate and an almost illusory means of providing shareholders with a fair share of the economies of size obtainable from the growth of their companies. In view of the judicial deference that has been accorded to shareholder ratification, reliance on disclosure and shareholder voting rights would serve to insulate the possible unfairness of management compensation from scrutiny by the courts.

Similar consequences would flow from reliance on negotiations between the unaffiliated directors and advisers as a primary restraint on investment company management compensation. The unaffiliated directors, as the only potentially disinterested persons in the management of most investment companies, can and should play an active role in representing the interests of shareholders not only in connection with management compensation but in other areas where the interests of the professional managers may not coincide with those of the company and its public investors. Strengthening the voice of truly disinterested directors in investment company affairs is important to the protection of public shareholders.<sup>201</sup> But even a requirement that all of the directors of an externally managed investment company be persons unaffiliated with the company's adviser-underwriter would not be an effective check on advisory fees and other forms of management compensation.

The unaffiliated directors are not in a position to bargain on an equal footing with the adviser on matters of such crucial importance to it. They are not free, as a practical matter, to terminate established management relationships when differences arise over the advisory fees or other compensation. This reflects, in large part, the adviser-underwriter permeation of investment company activities to an extent that makes rupture of the existing relationships a difficult and complex step for most companies. For these reasons, arm's-length bargaining between the unaffiliated directors and the managers on these matters is a wholly unrealistic alternative.

The Commission is not prepared to recommend at this time the more drastic statutory requirement of compulsory internalization of the management function of all investment companies. Such a step would deal most directly with the adverse consequences flowing from the external management structure of the industry in the area of management compensation as well as with other aspects of the relationship between the funds and their external service organizations. It has its analogy in the Public Utility Holding Company Act of 1935, which required the service function for public utility companies in registered holding company systems to be performed at cost.<sup>202</sup>

While internalization could produce significant savings in management costs for large investment companies and investment company complexes, for smaller ones it might be more costly. An advisory fee at the rate of 0.50 percent per year of net asset value, while far in

<sup>201</sup> For the Commission's recommendations in these respects, see pp. 332-334, *infra*.

<sup>202</sup> Holding Company Act, sec. 13;

excess of the cost of providing management for some of the larger fund complexes, would be insufficient to provide an adequate full-time staff for smaller investment companies. Since the prospect of profits from advisory contracts after a fund reaches adequate size has been the dominant motive for the promotion of investment companies, complete elimination of that prospect might prove a deterrent to the promotion of new investment companies and to even the continued existence of the small investment companies.

The Commission believes that an alternative to the more drastic solution of compulsory internalization of managements should be given a fair trial. That alternative lies in applying to management compensation the standard of reasonableness that the Act applies to other transactions between investment companies and their affiliated persons. The Commission believes that this regulatory approach also can resolve the problems that exist in the area of investment company management compensation. If it does not, then more sweeping steps might deserve to be considered.

#### H. SALES OF MANAGEMENT ORGANIZATIONS

##### *1. The need for shareholder protections*

In recent years, an increasing number of externally managed mutual funds have experienced changes in the management organizations that provide them with advisory and underwriting services. Since the external managers generally are in control of the funds they serve, the changes, in virtually every instance, have been initiated by the existing managers in connection with a sale of the assets of, or a controlling block of stock in, the adviser-underwriter. The amount of fund assets under management, in most, but not all of these cases, has been relatively small. In some instances, the change occurred because the operation of the fund had not proved profitable to the existing adviser-underwriter. In others, the change was occasioned by the death or retirement of a principal figure in the management organization.

Sales of mutual fund management organizations have created important problems in the administration of the Act. These problems derive from the fact that the price obtainable for the assets or stock of the adviser-underwriter depends on the ability of the seller to transfer to a prospective buyer the benefits derived from its relationship with the fund. While the management organization may have some tangible assets, by far its most valuable asset is its control of the fund. It is this control relationship which provides the management organization with an expectation of future earnings from advisory fees, and to a lesser extent, from brokerage and underwriting commissions.

Not every sale harms a fund; many strengthen it by providing a management organization with greater resources. Nevertheless, in every instance the opportunity to profit from the sale of the management organization creates a potential for harm to the fund and its shareholders. In such situations, the manager's consideration of his own interests may predominate over the interest of the fund and its shareholders. As the principal of one management organization which had been merged into another candidly stated in discussing his reasons for rejecting offers by other management organizations:

\* \* \* [With the group we chose] we got 18 percent of the management company. \* \* \* [This] was our consideration. No one else offered that, or even close to it.

Under such circumstances, sales of management organizations have raised substantial questions of unfairness to the funds and their shareholders in a number of cases. For example, in one instance new management agreed to pay for the retirement of a class of preferred stock of the old management organization, a registered broker-dealer, for a consideration of up to \$450,000. The consideration, however, was not paid by new management but by the fund under an agreement whereby the old manager would receive approximately 50 percent of the fund's brokerage commissions for a period of 7 to 15 years. At the time of the agreement the fund had assets of less than \$10 million. Most funds of that size utilize virtually all of their brokerage to obtain supplementary investment advice, pricing services for their shares and other services commonly available from broker-dealers in return for such commissions.<sup>203</sup> Thus, the creation of an obligation to use fund brokerage commissions to pay for a transfer of the advisory function meant that an asset of the fund which should have been utilized for its benefit was used for the sole benefit of its managers. Such an obligation also adds pressures to generate brokerage commissions irrespective of investment considerations.<sup>204</sup>

## 2. *The adequacy of existing shareholder protections*

The Act requires that all advisory and underwriting contracts provide for automatic termination in the event of their assignment.<sup>205</sup> The Act also specifies that the transfer of a controlling block of stock in the advisory or underwriting organization is deemed an "assignment" of the contract.<sup>206</sup> These provisions reflect congressional concern with the widespread "trafficking" in advisory and underwriting contracts prior to 1940, whereby frequent changes in investment company managements took place without the consent, and sometimes even without the knowledge, of the public security holders.<sup>207</sup>

These statutory provisions, in effect, require that a sale of the management organization be approved by the holders of a majority of a fund's voting securities.<sup>208</sup> Without such approval of a new advisory contract<sup>209</sup> with the buyers, the acquisition of the management organization would be of little value. Thus, to protect the interests of shareholders in the event of a sale of the management organization the Act brings into play the "few elementary safeguards" applicable to the initial approval and renewal of advisory contracts with existing management organizations.

In the Commission's experience, shareholder approval of a sale of management organization has been readily obtained. The Commission knows of no instance where fund shareholders have rejected a new advisory contract proposed by their managers in connection with a sale by them of the management organization. The prices paid in these transactions invariably reflect an expectation that the

<sup>203</sup> See pp. 163-167.

<sup>204</sup> See pp. 174-179.

<sup>205</sup> Sec. 15(a).

<sup>206</sup> Sec. 2(a)(4).

<sup>207</sup> Investment Trust Study, pt. 3, pp. 98-115, 1029-1031, 1078-1098, 1278-1303, 1363-1366, 1874-1888, 1918-1936, 2764-2768.

<sup>208</sup> It has been held that a change in control of a publicly held management company as a result of a proxy contest does not constitute an assignment within the meaning of the Act. *Wilhelm v. Murchison*, 342 F.2d 33 (C.A. 2, 1965).

<sup>209</sup> The Act does not require shareholder approval of underwriting contracts. Sec. 15(b).

buyers will be able to succeed to the sellers' control relationship with the fund. These prices usually have been far in excess of book value of the property transferred and represent a capitalization of anticipated future earnings that can be realized only from the continuance of that relationship.

These safeguards in some situations have provided inadequate protections for the funds and their shareholders. The shareholders, and in many situations the unaffiliated directors, are in no position to take an active role in the selection of new management organization or in the determination of the terms and conditions of the sale. The shareholders and the unaffiliated directors need be consulted only in connection with the last step in the sale—approval of the new advisory contract. At that point their alternatives are limited. They must either accept the new contract, continue with an existing management that may be unable or reluctant to perform its duties or have no management at all. Under these circumstances any concern over possible unfairness to the fund resulting from the sale is likely to be outweighed by the prospects of having no manager at all or having to retain a manager who has been deprived of an opportunity for an advantageous sale of the management organization and who may be unwilling or unable to function properly.

A sale of the management organization is an event of paramount importance to a fund and its shareholders, and the conflict of interest involved usually is a striking one. It is in the interest of the retiring manager to obtain for himself the highest possible price for succession to the relationship and his concern for the interests of the fund may be substantially reduced by the fact that he will no longer have any connection with it. The interest of the fund and its shareholders, on the other hand, is to obtain the best available management at a reasonable cost. In this as in other aspects of the relationship between management and shareholders of mutual funds, competition cannot be relied upon to provide the necessary safeguards because the management's control over the fund is sufficiently strong so that prospective successors to the relationship will bid for the favor of the existing management rather than for the favor of the fund and its shareholders.

The manager of a mutual fund is unquestionably in a fiduciary relationship to it. Consequently, the transfer of that relationship for a price has some elements of the sale of a fiduciary office. Sale of a fiduciary office is strictly prohibited at common law because of the conflicts of interest which are involved. In the transfer of mutual fund management, however, as in the related area of management compensation, certain of the protective provisions of the Act have had the somewhat ironical, and presumably unintended, effect of diluting the protections provided by common law principles of fiduciary responsibility. Thus, by reason of the automatic termination provisions in the event of assignment and the requirement that shareholders approve the new arrangements, it can be argued, as was successfully done in *S.E.C. v. Insurance Securities, Inc.*, that there is



no sale of the fiduciary office, since that office automatically terminates and a new one is created with stockholder approval.<sup>210</sup>

However unrealistic this conclusion may appear in the light of the ability of the retiring management to use the proxy machinery to insure the installation of its self-chosen successors, application of the strict common-law principle might well be unfair insofar as it denies to the retiring management any compensation for the elements of value in the relationship which they may have built up over the years. The absence of an opportunity to capitalize to some reasonable degree on the future earnings obtainable from this relationship could also be harmful to the fund, since existing management might be reluctant to surrender that relationship and to provide the fund with new and possibly more effective management.

On the other hand, as pointed out above, disclosure, the presence of unaffiliated directors, and shareholder approval do not, in and of themselves, provide adequate protection to a fund and its shareholders against the dangers of overreaching inherent in such situations. The problem is not so much that the applicable standards of conduct in this situation are known, or even that they are not usually adhered to. The difficulty is that if retiring management looks only to its own self-interest and negotiates an unfair arrangement, there is presently no adequate remedy in the Act. The Commission must rely primarily at present on its authority to seek an injunction under section 36 of the act upon the ground that, in arranging the succession, management or directors have been "guilty" of "gross misconduct or gross abuse of trust." The courts might be extremely reluctant to place that stigma, and the consequent disabilities, upon businessmen merely because the terms of succession appear unfair.

### 3. *The Commission's recommendation*

In the Commission's view, existing law does not adequately protect the interests of investment company shareholders against harm resulting from sales of management organizations. It believes that a fuller measure of protection can be given without interfering with the ability of investment company managers to dispose of their interests in advisory organizations. Accordingly, the Commission recommends that the Act be amended to prohibit any sale of the assets of or a controlling block of stock in an investment company management organization if the sale, or any express or implied understanding in connection with the sale, is likely to impose additional burdens on the investment company or to limit its freedom of future action. The Commission should be expressly authorized to institute actions to enforce this prohibition and to intervene as a party in any private action brought for that purpose.

The proposed amendment would expressly recognize the standards of fiduciary duty required of investment company managers when they sell their interests in advisory organizations. The proposed amendment would not authorize the Commission or the courts to determine whether or not owners of advisory organizations should

<sup>210</sup>In *S.E.C. v. Insurance Securities, Inc.*, 254 F. 2d 642 (C.A. 9), certiorari denied, 358 U.S. 823 (1958), the Commission sought to enjoin the sale of stock in a management organization at a substantial premium above its book value as a gross abuse of trust in violation of sec. 36 of the Act. The Commission took the position that such a transaction constituted a sale of fiduciary office and that the capitalized value of the expected future earnings from the advisory contract represented an asset of the fund which could not be appropriated by the adviser or its stockholders. This view was rejected by the court which held that the expectation of future earnings from renewals of the fund's advisory contract was not an asset of the fund but an element of the adviser's business on which it could profit (254 F. 2d at 651). (See also *Krieger v. Anderson*, 40 Del. Ch., 363, 182 A. 2d 907 (Del. Sup. Ct., 1962).

dispose of their interests. Nor will the amendment empower the Commission or the courts to prescribe or to limit the consideration that a retiring adviser can obtain from the successor.

The purpose of the proposed amendment is to protect investment company shareholders from harm resulting from sales of the management organization. It would prohibit such sales when it appears affirmatively that they are likely to impose additional burdens on the investment company involved. It would apply in situations, for example, in which the buyer of the management organization agreed to cause the fund to direct its brokerage to the seller or to employ the seller at a salary or upon other terms and conditions onerous to the fund or restrictive of its future freedom of action. In the Commission's view, the proposed amendment would protect investment company shareholders against harm resulting from sales of the management organization without discouraging investment company managers who are unable or unwilling to continue serving in that capacity from terminating their relationship and without unduly affecting the incentives for organizing and developing new investment companies.

Although the proposed amendment would define certain specific duties of investment company managers in connection with sales of their management organization, it would not in any way derogate from or supersede their basic fiduciary obligation to arrange for their successors in a manner which is not adverse to the interests of the company and its shareholders. Moreover, to the extent that problems of shareholder protection in connection with sales of management organizations have been accentuated by existing levels of management compensation obtainable through control of investment companies, they should be mitigated by adoption of the proposed standard of reasonableness. The amounts paid to acquire control of investment company assets through purchases of management company organizations would not be a factor in determining the reasonableness of management compensation or in justifying the level of such compensation under the proposed standard of reasonableness.

TABLE 111-11.— Summary of shareholder fee litigation

Name of fund	Investment adviser	Effective date of settlement or order of final disposition	For the fiscal year prior to effective date of settlement						
			Fiscal year end	Estimated average net assets (millions)	Actual advisory fee paid (thousands)	Estimated advisory fee payable had settlement been in effect thousands:	Estimated advisory fee savings thousands	Estimated savings as a percent of advisory fee paid (percent)	Estimated other savings thousands
1. Affiliated Fund, Inc. ....	Lord Abbett & Co. ....	Jan. 1, 1962*	Oct. 31, 1961	\$804.0	\$1,976.5	\$1,869.0	\$107.5	5.4	
2. Axe-Houghton Fund A, Inc. ....	E. W. Axe & Co., Inc. ....	Oct. 1, 1962*	Nov. 30, 1961	45.8	251.8	228.9	22.9	9.1	
3. Axe-Houghton Fund B, Inc. ....	do. ....	Aug. 1, 1963*	Oct. 31, 1962	172.4	948.4	795.7	152.7	16.1	\$122.0
4. Capital Shares, Inc. ....	Investors Counsel, Inc. ....	July 1, 1964 <sup>b</sup>	Dec. 31, 1963	126.5	862.6	862.6			
5. Chemical Fund, Inc. ....	F. Eberstadt & Co. ....	May 4, 1961 <sup>c</sup>	Dec. 31, 1960	268.5	894.2	894.2			
6. Diversified Growth Stock, Inc. ....	Investors Management Co., Inc. ....	Jan. 20, 1966*	Dec. 31, 1964	118.2	681.5	681.5			
7. Dividend Shares, Inc. ....	Calvin Bullock, Ltd. ....	Aug. 1, 1963*	Oct. 31, 1962	268.6	1,016.7	1,016.7			
8. The Dreyfus Fund, Inc. ....	The Dreyfus Corp. ....	Not effective*	Dec. 31, 1965	1,339.3	5,109.0	5,109.0			\$175.0
9. Fidelity Capital Fund, Inc. ....	Fidelity Management & Research Co. ....	June 3, 1965	Nov. 30, 1964	221.0	1,017.9	1,001.9	16.0	1.5	
Fidelity Fund, Inc. ....	do. ....	Jan. 1, 1962*	Dec. 31, 1961	486.7	2,140.5	1,885.8	254.6	11.9	
Financial Industrial Fund, Inc. ....	Financial Programs, Inc. ....	Apr. 10, 1964 <sup>f</sup>	Aug. 31, 1963	241.5	1,207.3	1,207.3			\$306.1
Fundamental Investors, Inc. ....	Investors Management Co., Inc. ....	Apr. 1, 1963 <sup>h</sup>	Dec. 31, 1962	642.7	3,181.3	2,963.3	218.0	6.8	
Group Securities, Inc. ....	Distributors Group, Inc. ....	Mar. 1, 1963*	Nov. 30, 1964	267.6	1,247.1	1,245.5	1.5	.1	
Investors Mutual, Inc. ....	Investors Diversified Services, Inc. ....	Jan. 22, 1963*	Sept. 30, 1962	1,881.1	9,155.3	8,296.1	859.2	9.4	\$554.9
Investors Stock Fund, Inc. ....	do. ....	do. ....	Oct. 31, 1962	950.3	4,751.3	4,531.2	220.1	4.6	\$403.1
Keystone Custodian Funds. ....	Keystone Custodian Funds, Inc. ....	Aug. 23, 1963*	Dec. 31, 1962	677.6	2,848.9	2,797.5	51.4	1.8	\$120.0
The Lazard Fund, Inc. ....	Lazard Freres & Co. ....	Mar. 6, 1961*	Dec. 31, 1960	131.3	606.6	567.4	39.2	6.5	
National Securities Series. ....	National Securities & Research Corp. ....	Oct. 14, 1960*	Apr. 30, 1966	700.4	3,502.0	3,139.0	363.0	10.4	\$48.0
19. The One William Street Fund, Inc. ....	Lehman Bros. ....	May 8, 1962*	Dec. 31, 1961	294.6	1,473.1	1,348.1	125.0	8.5	
20. Television-Electronics Fund, Inc. ....	Supervised Investors Services, Inc. ....	Nov. 1, 1963*	Oct. 31, 1963	372.4	1,860.9	1,665.1	195.8	10.5	
21. United Funds, Inc. ....	Waddell & Reed, Inc. ....	Apr. 1, 1965*	Dec. 31, 1964	1,642.0	7,138.7	7,285.9	(147.2)	(2.1)	\$493.5
22. Wellington Fund, Inc. ....	Wellington Management Co. ....	Mar. 1, 1963*	Nov. 30, 1962	1,389.5	3,604.2	3,484.2	120.0	3.3	

\* Settlement.  
<sup>a</sup> Savings from reduction in distribution or "continuing" fee paid to Axe Securities Corp., the fund's underwriter.  
<sup>b</sup> Consent judgment in favor of defendants.  
<sup>c</sup> Judgment for defendants dismissing the complaint on the merits.  
<sup>d</sup> Nonadvisory administrative expenses previously paid by the fund and assumed by the plaintiff.  
<sup>e</sup> In addition, the proposed settlement provides for the assumption by the adviser of certain administrative expenses previously paid by the contractual planholders. In 1965 these expenses amounted to approximately \$75,000.

<sup>f</sup> Judgment for the defendants with respect to advisory fees, but for plaintiff as to certain expenses.  
<sup>g</sup> Refund to correct overpayments attributable to misinterpretation of advisory agreement over a number of years.  
<sup>h</sup> Appeal from judgment for defendant withdrawn pursuant to settlement.  
<sup>i</sup> Reduction in compensation of the fund's trustee whose fee pays for nonadvisory expenses.  
<sup>j</sup> Does not include United Bond Fund whose fee remained unchanged.