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FOREWORD

Twenty-seven years ago, the Investment Company Act was promulgated to regulate the mutual fund industry, which then represented about $500 million in assets. At that time, Congress recognized in section 14(b) [1] that industry growth might necessitate a reevaluation of the adequacy of the legislative framework. Since 1940, the asset volume of the industry has increased eighty-fold and mutual funds have taken a prominent place among the financial institutions of America. Almost a decade ago, the Securities and Exchange Commission decided that the phenomenal growth of the funds demanded a reevaluation and, pursuant to section 14(b), commissioned the Wharton School to conduct a study of the industry. The Wharton School Study was followed by the Special Study of the Securities Markets, and eventually by the SEC's Report on the *Public Policy Implications of Investment Company Growth.*

The report, prepared by the commissioners, proposed some legislative changes to rectify problems which the earlier studies had disclosed. Not unexpectedly, these proposals provoked widespread response from industry spokesmen. To provide an opportunity for an exchange of views, a Conference, co-sponsored by the Law School and the ALI-ABA Committee for Continuing Legal Education, was held at the University of Pennsylvania on February 9 and 10, 1967. Approximately 350 persons—lawyers, broker-dealers, bankers, insurance company and mutual fund executives, academicians and students—gathered in Philadelphia to witness a discussion among some of the most articulate authorities in the field.

At the first session on Thursday morning, the groundwork for the Conference was laid through a discussion of the proper role of

[1] Section 14(b), 54 Stat. 811 (1940), 15 U.S.C. § 80(a)-14(b) (1964).

mutual funds as investors of large pools of money. Although the SEC made no specific recommendations in this area, analysis of issues involving the potential control of funds over their portfolio companies, the impact of mutual fund investment transactions on stock prices and on the securities markets, and the ability (or inability) of large funds to retain sufficient flexibility in the management of their portfolios, served to highlight the size and importance of mutual funds as financial institutions.

The remaining time was spent discussing the Commission's specific proposals to combat problems which, in the opinion of the SEC, make an investment in mutual funds too costly to the average investor. On Thursday afternoon, discussion focused on the SEC recommendation that the "reasonableness" of the fee charged by the investment advisor be guaranteed through expanded judicial supervision. On Friday, the panel considered the SEC suggestions for changes in the laws governing fund share distribution. Specifically, it had been proposed by the Commission that the maximum allowable sales load be reduced from 9 per cent to 5 per cent; that the front-end load be eliminated; that customer directed give-ups be prohibited; and that volume discounts be put into effect in the exchange market.

In order to present the discussion of these significant problems in the securities field to a wider audience, the University of Pennsylvania Law Review has devoted this issue to the Conference. The importance of this undertaking is underscored by the commencement of Congressional hearings on the SEC proposals, now scheduled for this spring. It is the hope of the editors of the Law Review that this record of the proceedings will foster an understanding of the issues involved in the continuing dialogue between the Commission and the industry. In order to make the material presented more useful, the transcript has been edited, and headnotes and footnotes have been added. Although each participant has had an opportunity to edit his remarks, the aim throughout has been to preserve the substance and atmosphere of the discussion and exchange which characterized the Conference.

The Law Review would like to express its appreciation to the members of the panel, Scott Logan, a member of the class of 1967, and Professor Robert H. Mundheim for their aid in compiling and editing this transcript.

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