

## TABLE OF CONTENTS

MUTUAL FUNDS AS INVESTORS OF  
LARGE POOLS OF MONEY

	Page
Introduction .....	669
Background of the SEC's Report .....	670
The Commission's Objectives .....	671
Mutual Fund Influence Over Portfolio Companies—The Mutual Fund as a Shareholder .....	673
The Argument That Mutual Funds Are Locked In .....	674
Obligations of a "Locked In" Fund .....	675
Suggestion for Limiting Mutual Fund Lock-ins .....	676
The Dilemma of the Funds .....	676
Argument That the Funds Are Not Locked In .....	677
Objection to the Suggestion for Limiting Fund Lock-ins ..	677
Adequacy of Markets to Handle Fund Portfolio Needs ...	678
Primary Responsibility of Fund Management .....	680
Pitfalls in Fund Influencing of Portfolio Management ...	681
The Conglomerates .....	682
The Giant Mutual Fund .....	683
Comparative Performance of Giant Mutual Funds .....	683
Portfolio Mobility and Flexibility .....	685
Future Prospects for the Giant Fund .....	688
The Performance Fund .....	689
Definition .....	689
Operating Procedures .....	690
Philosophy of Management .....	692
Correlation of Portfolio Turnover and Performance .....	695
Comparative Performance of Giant Mutual Funds .....	696
Application of Performance Fund Principles to the Giant Fund .....	698
The Exchange Market and the Institutional Transaction .....	699
Dramatic Examples of Portfolio Liquidations and Acquisitions .....	700
The Third Market and the Institutional Transaction .....	702
An Economist's Viewpoint of the Institutionalization of the Market .....	704
Mutual Fund Impact on Stock Prices .....	704
The Problem of Mass Redemptions .....	705
Mutual Fund Impact on Stock Price Fluctuations .....	705
The Growing Importance of the Nonauction Market .....	706
The Implications of Fund Portfolio Turnover .....	706
Performance Comparison of Mutual Funds and Pension Funds .....	708

## TABLE OF CONTENTS (Continued)

	Page
Correlation of Portfolio Turnover and Performance .....	709
Relation Between Exchange Market and Third Market ...	709
The Spectre of Mass Redemptions .....	710
The Need for More Data About Portfolio Turnover .....	712
Relation of Reciprocal Business to Portfolio Turnover ....	713
Standards of Performance .....	713
Impact of the Funds Attracting New Equity Capital .....	716
The Institutional Investor and Inside Information .....	718
The Problem of Acquiring Information .....	719
The Problem of Evaluating Information .....	721
The Ethical Problem .....	722
The Special Problem of the Conglomerates .....	724
The Need to Further Define the Problems .....	724

## THE MUTUAL FUND MANAGEMENT FEE

Introduction .....	726
Findings of the Wharton Study .....	727
The Expense of Serving Mutual Funds Compared to Non- investment Company Clients .....	729
The Industry Justification for the Cost-Rate Discrepancy ..	730
The Relationship Between Industry Structure and Manage- ment Fees .....	730
The Industry View of Management Fee Rates .....	731
The Nature of the Investment Adviser's Business .....	731
The Argument Against Government Regulation of Fees ...	732
Criteria for Measuring the Reasonableness of the Manage- ment Fee .....	733
The Management Fee Compared With Bank Charges ....	733
The Management Fee and Performance .....	734
Is the Management Fee Affected by Competition? .....	735
Conflicts of Interest in the Mutual Fund Structure .....	738
The Unaffiliated Director .....	739
The Argument That Stockholder Ratification Is Meaningless	740
Influence of the Unaffiliated Director .....	741
The Position of the Commission Report .....	741
Enforcing Standards of Fiduciary Responsibility .....	742
The Investment Adviser as Fiduciary .....	744
The Power of the Unaffiliated Director .....	745
The Argument Against Commission Intrusion .....	746
Standards to Guide the Unaffiliated Director .....	747
The Shell Theory .....	747
The Power of the Directors to Internalize Management ...	749

## TABLE OF CONTENTS (Continued)

	Page
The Investment Adviser's Relationship to the Fund's Shareholders .....	750
Governmental Regulation of Profit .....	751
Fiduciary Duties of Directors .....	752
The Duties and Responsibilities of the Unaffiliated Director ...	753
Considerations in Deciding to Change Management .....	755
The Spectre of Rate Regulation .....	755
The Fiduciary Duty of the Unaffiliated Director .....	756
Potential Liability for Unaffiliated Directors .....	757
Effective Power of the Independent Director .....	757
The Difference Between Unreasonableness and Waste .....	760
The Argument That the Commission Proposal Constitutes Rate Regulation .....	762
The Argument That the Commission Proposal Does Not Constitute Rate Regulation .....	762
Performance and the Management Fee .....	763
The Argument for the Performance-Related Management Fee .....	764
The Argument Against a Performance-Related Management Fee .....	765
Measures of Performance .....	766
The Question of Reducing the Fee for Poor Performance ..	767

## THE FINANCING OF SALES OF MUTUAL FUND SHARES

## THE SALES LOAD

Introduction .....	769
An Economist's Evaluation of the Commission's Recommendation .....	770
The Economic Benefits of a High Volume of Fund Share Sales .....	772
Alternative: Revise Section 22(d) .....	773
Alternative: Improve Disclosure to Potential Investors ....	773
Alternative: Encourage New Competition .....	774
Restrictions on Advertising .....	774
Advertising Restrictions Should Not Apply to the Mutual Fund Industry .....	775
A Commission Staff Viewpoint .....	776
Impact of Liberalized Advertising Rules on Sales Costs ...	777
The Requirements of the Cashion Opinion .....	779
Market Tests of Advertising .....	779
Financing Fund Advertising .....	780

## TABLE OF CONTENTS (Continued)

	Page
The Five Per Cent Sales Load Limit and the Retailer . . . . .	781
The Unique Quality of the Fund as an Investment Medium	782
Funds Must Be Sold . . . . .	783
The Compensation of the Retailer . . . . .	784
A Sympathetic View of the Five Per Cent Recommendation	786
The Economic Impact of a Decreased Sales Load . . . . .	788
Investor Ignorance of Alternatives . . . . .	789
Benefits of a High Volume of Sales . . . . .	789
Commission Responsibility for the Cost of Sales . . . . .	789
Recapitulation of Alternatives to Commission Recom-	
mendations . . . . .	790
A Staff Explanation of the Commission's Recommendation . . .	790
Commission Recognizes That Funds Must Be Sold . . . . .	791
Commission Doesn't Argue That Distributors Are Over-	
Compensated . . . . .	791
Distinction Between Investment in Mutual Funds and Other	
Securities . . . . .	792
Evaluation of Proposal for Expanded Disclosure . . . . .	792
Evaluation of Proposal to Revise Section 22(d) . . . . .	792
The Justification for the Five Per Cent Recommendation ..	793
Economic Impact of the Commission's Recommendation ..	794
Impact of Five Per Cent Recommendation on Large NYSE	
Firms . . . . .	794
Effect on Fund Share Sales . . . . .	796
Argument That the Level of Sales Load Is Not a Problem	796
Difficulties in Justifying a Particular Sales Load Limitation . .	798
Justification for the Five Per Cent Maximum Sales Load ..	799
Impact of the Five Per Cent Maximum Sales Load on Non-	
NYSE Firms . . . . .	801
Industry Views on the Sales Load . . . . .	802
Adequate Compensation at the Retail Level . . . . .	802
The Realities in Reducing the Sales Load . . . . .	804
Arriving at a Sales Load Rate . . . . .	804
Professorial Views on the Sales Load . . . . .	805

THE CONTRACTUAL PLAN METHOD OF FINANCING  
FUND SHARE SALES

The Commission's Position . . . . .	807
The Effect of the Front-End Load . . . . .	808
Rejected Justifications for Front-End Loads . . . . .	809
The Advantages of the Contractual Plan . . . . .	811
General Benefits . . . . .	811

## TABLE OF CONTENTS (Continued)

	Page
Features Peculiar to Contractual Plans .....	812
The Performance of Contractual Plans .....	813
The Typical Contractual Plan Purchaser .....	814
An Industry Response to the Commission Criticisms .....	815
Self-Regulation by the Industry .....	816
Compensation of Contractual Plan Salesmen .....	817
Another Type of Contractual Plan Sales Financing .....	818
The Impact of Forbidding the Front-End Load .....	820
Sales Diversion .....	821
Elimination of the Front-End Contractual Plan .....	821
An SEC Rebuttal .....	822
FINANCING FUND SHARES SALES WITH RECIPROCAL BUSINESS	
Background .....	823
The Areas of Concern .....	824
The Beneficiaries of the Present System .....	824
The Commission's Recommendations .....	825
Customer-Directed Cash Give-Ups .....	825
Use of the Regional Exchange to Direct Give-Ups .....	826
Volume Discounts and Abolition of the Give-Up .....	827
The Operation of Reciprocal Business in Portfolio Transactions .....	828
The Case for Industry Self-Regulation .....	828
Recapture of Commissions Through Membership on a Regional Exchange .....	832
An Alternative Recapture Arrangement—NASD Member- ship .....	833
A Response to the Recapture Proposals .....	834
Evaluation of the Commission's Proposal to Prohibit Give-Ups .....	836
The Basic Problem—Conflict of Interest .....	837
Response That Commission Proposals Are Partial Solutions .....	837
Alternative Proposals .....	840
Volume Discounts .....	840
The Argument That the Commission's Proposals Are Too Broad .....	842
Volume Discounts .....	843
The Commission Staff's Reply .....	844
Policing the Prohibition Against Give-Ups .....	845
The Advantages of the Commission Proposal .....	847
The Impact of the Proposal on the Regional Exchanges .....	849
What Role for the Regional Exchanges? .....	850
Problems Confronting Alternative Proposals .....	851
The Commission's Resolution .....	853