Mr. WHITE. Yes; Mr. Chairman.

Senator WAGNER. Very well. We will be delighted to hear from you.

STATEMENT OF JAMES N. WHITE, OF SCUDDER, STEVENS & CLARK, INVESTMENT COUNSEL, NO. 10 POST OFFICE SQUARE, BOSTON, MASS.

Mr. WHITE. My name is James N. White and I am a general partner of the firm of Scudder, Stevens & Clark, investment counsel.

Senator WAGNER. Where are they located?

Mr. WHITE. In Boston, New York, and Philadelphia. This is in regard to title I.

Senator WAGNER. All right, you may go ahead.

Mr. WHITE. Our firm is sponsor and manager of two openedd investment trusts which were formed for the purpose of giving investment counsel to small investors who wished our advice. These funds have never been publicly offered or underwritten and have been issued without any loading charge. Previous testimony on title I has indicated that there was no desire on the part of the framers of the bill to discourage this type of trust, and a limited exemption in the matter of special treatment in connection with control of the board of directors has been offered funds of this type and the bill. We believe that this exemption could properly be broadened and the funds to which it might apply more specifically defined.

The Scudder, Stevens & Clark fund was organized under the laws of Massachusetts in April 1928 for the purpose of taking care of small investors who wanted to employ the services of Scudder, Stevens & Clark. For 8 years we had been trying to supervise funds of $25,000 or less and had found that they were not only unprofitable to us but that we could not invest them to as great advantage as our larger individual accounts. Therefore, in 1927 we formed an investment counsel trust as an experiment in investment trust management. The first million dollars that we managed in investment trust form came from individuals who were previously clients of our firm most of them comparatively small clients.

Since this fund was formed in order to make investment counsel available to the small investor, we endeavored to make his position as identical as possible to that of our individual larger clients by the following stipulation:

(1) The subscription price and the redemption price should be the approximate liquidating value of the fund at the time of subscription or redemption.

(2) There should be no loading charge, and our firm should not profit from the fund in any way except through the management fee of one-half of 1 percent of the principal per annum, the same rate paid by individual clients.

(3) No sales commission should be paid to any dealer or underwriter.

(4) The portfolio should be so balanced by ownership of short- and long-term bonds and preferred and common stocks as to represent a suitable investment medium for the entire capital of a small investor.

(5) Not more than 5 percent of the gross value of the fund should be invested in any single security except obligations of the United States Government.

(6) The fund should have no senior securities outstanding.

(7) Except in rare instances, the investments of the fund should be confined to seasoned securities of nationally known companies listed on a national security exchange and readily marketable.

Since the date of its organization in 1928, the Scudder, Stevens & Clark fund has always operated within these limitations. The stock has never been publicly offered or underwritten and we have paid no sales commissions to any brokers or dealers for distributing its shares. Nevertheless, the fund has grown steadily and subscriptions have exceeded redemptions in each year of its existence. Almost entirely because of voluntary subscriptions of individuals wishing the management of our firm, the fund now amounts to about $11,500,000, and we have about 1,000 stockholders. Many of the shareholders have their entire capital invested in this fund, a fact of which we are very conscious in reviewing our investment policy.

Shares are issued at liquidating value plus a premium of 1 percent. This premium is not a load but accrues to the assets of the fund. In the same way, shares are redeemed at liquidating value less a discount of 1 percent which remains in the fund. The purpose of the premium and discount was to discourage trading in the shares. For this purpose also there is a provision that shares purchased must be held at least 30 days.

Continuity of management is assured by the capital structure of the corporation. The principal officers and all but one of the directors are members of or associated with the firm of Scudder, Stevens & Clark, and 90 percent of the voting or class B stock is held by individuals connected with that firm. This class B stock is identical in every respect with the class A stock held by the public except for the voting privilege and the fact that it is not redeemable. It has to be offered to the management.

None of the officers or directors of the corporation may have dealings with it as principals in the purchase or sale of securities. Furthermore, to assure complete protection for the stockholders, the bylaws require that all securities, moneys, and funds of the corporation must be entrusted for safekeeping to a national bank or trust company as depositary.

Our experience with the Scudder, Stevens & Clark fund in the first few years of its operation indicated that it filled a definite demand for an investment trust of this kind, but it also demonstrated an important limitation on its usefulness. In our work as investment counsel we attach great importance to adopting our investment program to the individual requirements of each client, and no two accounts are handled exactly alike either from the point of view of a general investment program or security selection. Of necessity, however, every person who employs our services through the medium of a participation in the Scudder, Stevens & Clark fund receives exactly the same investment program.

We discovered that the investment program of the Scudder, Stevens & Clark fund failed to fill the requirements of some investors whose primary interest was neither current income nor relative stability of principal or purchasing power, but whose main objective was to build up their investment funds over a period of years. To meet this demand we formed another investment trust in March 1929. The features of this fund were identical with those of the Scudder, Stevens

& Clark fund except in two respects. In the first place, it was intended that this fund would pay no dividends to participants and that all earnings would be reinvested in securities. In the second place, it was the announced policy that practically all of the assets would be invested in equities under almost all conditions.

While both the Scudder, Stevens & Clark fund, and our other smaller fund are corporate in form, in reality they are commingled funds of the small clients of Scudder, Stevens & Clark. We have made it clear to stockholders that they are welcome at any time to call at our offices and to discuss with responsible members of our organization not only the affairs of the corporation in which they are interested but also their personal financial problems. Many stockholders have availed themselves of this invitation and have discussed with us insurance, taxes, and even business and sometimes personal problems. We regard this a part of our job as managers of their invested capital, and we make no charge for our services in this connection.

The two investment trusts which we manage represent only a small fraction of our total clientele, but we hope they will continue to grow gradually in the future as they have in the past. We do not claim that they represent the complete or the only solution of the problem of the small investor, but we feel that we are making a contribution toward this objective. Ours is not the only investment trust of this type. The investment counsel firm of Loomis, Sayles & Co. offers shares of similar characteristics to small investors seeking their management. Other investment counsel firms tell us that they contemplate organizing such funds for the same purpose in the future. This is a natural adjunct of investment counsel and is available to small investors on reasonable terms and we believe, from the testimony before this committee and from certain provisions in the bill itself, that there is no intention to discourage this type of investment trust.

There are many provisions of title I which seem to me needlessly restrictive and harsh. The committee has been listening to criticism of the bill as a whole for many days, however. I don't want to cover ground already well trodden, nor do I feel competent to discuss many of the provisions of the bill. I do want to mention certain provisions which would seriously affect if not absolutely impair the operation of the Scudder, Stevens & Clark funds which I have described.

First of all are the provisions which would require our funds to have a majority of independent directors. That requirement would defeat the very purpose for which our funds were organized.

Senator Wagner. How about having assurance of some independent directors?

Mr. White. You realize I know that my point is there of being simply a case where the stockholders chose our management. The point against having some independent directors is, first, that you get a divided responsibility, and then, secondly, even with a minority of independent directors I think our firm or any investment counsel firm would think very seriously before they went against the advice of a minority.

Senator Wagner. You are in touch with them or at least there is a relationship between you and your shareholders?

Mr. White. They came to us.

Senator Wagner. There is a difference there, no doubt.

Mr. WHITE. We think so; yes.

Senator HUGHES. Is there a majority of your directors now who are independent?

Mr. WHITE. All but one are either members of our firm or on our staff. That is, one out of nine, I think; and he is affiliated with us in the way of being a sort of client, I might say.

The owners of stock in our funds have purchased their interest because, rightly or wrongly, they wanted to have Scudder, Stevens & Clark management. They remain stockholders in our funds only because they continue to want our management; otherwise, they can redeem their shares, as they sometimes do, and look elsewhere for investment management. If a majority of directors are truly independent, however, it is possible that the stockholders in our funds will have forced on them the choice of accepting an investment management which they have not chosen and do not want, or of getting out of the fund.

Senator HUGHES. If I understand the bill it permits you to have a majority of the directors.

Mr. WHITE. It permits us to have a majority, and of course you can always work with a majority, but from the point of actually running the fund, we find that our one independent director has a great deal of weight with us, and we hesitate, even with eight against one, when he feels strongly about a matter, to vote him down simply because we outnumber him. He happens to be the president of a trust company, and we defer to him as much as we possibly can in order to get the benefit of his judgment. It would not be a crushing blow or anything like that, but what our stockholders really want is to get a reflection of our judgment as investment and research counsel. It is a question I would be perfectly willing to put up to our stockholders.

There is another and perhaps more serious objection to the independent director requirement. It would mean a division of investment responsibility between our firm and the outside directors. Our advice might not be followed, with the result that our clients, the fund stockholders, would not be getting what they believed they were getting and wanted to get. Again, the divided responsibility might result in compromises with which neither we nor the independent directors would be satisfied—or in constant changes of direction which would be harmful. This point, it should be noted, would apply as well to a provision requiring a minority of independent directors—for I think any firm of investment counsel would necessarily hesitate to follow an investment course opposed by independent minority directors, no matter how sound that course should appear.

I think that there is a different argument against the requirement of independent directors—one which is entirely selfish but nevertheless valid. Our funds were started by us; we have done the work and spent the money involved in organization; and our clients are the shareholders.

It seems distinctly unfair that independent directors, or for that matter a majority of the shareholders, should hand the results of this work of ours, and the goodwill of our clients, over to another firm of investment counsel or investment managers. This is particularly true since any shareholder who ceases to like our management, who doesn't want to continue in substance as a client of ours, can always redeem his stock.

So much for the independent directors' requirement.

Next I would put the provisions which makes it impossible for us to manage more than one fund. Section 10 makes it impossible to continue to manage more than one fund; section 11 makes it impossible to start a new fund. We now manage two trusts with different investment objectives. It is rather probable than otherwise that it will prove desirable to form an additional trust or trusts to meet changes in investment conditions or to fulfill the needs of other groups of investors. For example, for some time we have had under consideration the formation of a trust, subscriptions to which would be strictly limited to our regular clients, which would invest in the securities of smaller, less well-known and less marketable companies than those whose securities we generally recommend.

For practical reasons, mostly of marketability, we could not recommend the securities of such companies extensively among our individual clients, and a new trust would be the only satisfactory way to handle the matter. In the same way, although we could not advise our clients individually to buy commodities in case of extreme inflation, we could do so through the medium of investment trusts. As long as there were no dealings between the funds, we see no objection to permitting investment counsel to manage several, and we think our clients might be somewhat shocked if they felt that a law stood in the way of our giving them our best independent advice.

Finally, I want to mention specifically one other feature of title I—the provisions requiring registration not only of an investment trust but also of its investment counsel, manager, officers, directors, and other affiliated persons.

Registration means not only disclosure; it means subjection to regulation. In dealing with the regulation of investment counsel proposed in title II, I will point out the dangers to our profession which we fear are inherent in governmental regulation. These same dangers exist whether regulation of our profession is imposed under title I or title II. It ought to be possible for us to serve our clients by means of a commingled fund without subjecting all our affairs, and our clients' affairs, to the drastic regulatory and investigatory provisions of title I.

The bill does contain one provision which recognizes, perhaps, that such investment counsel-sponsored trusts deserve recognition. A limited exemption for such trusts is granted under paragraph 3 of section 10 (a). We think that the definition of such types of trust could be improved upon and that the exceptions afforded such a type of trusts should be extended.

As to defining such a type of trust, we think that a trust to qualify should meet the following conditions. Some of them are more restrictive, some less restrictive, than those now appearing in section 10 (a) (3):

1. The trust should be an open-end investment company.

2. There should be no sales load on securities issued by such investment company, and no sales or promotion expense should be incurred by it.

3. It should be managed by an investment counsel who is primarily engaged in no business other than that of investment counsel. Possibly it should be required that the name of the investment trust should contain the name of the investment counsel who sponsors it.

4. Such investment company should have no manager other than such investment counsel and such investment counsel should not

receive a management fee in excess of 1 percent of such company's net assets averaged over the year or averaged over definite dates within the year.

5. For such a fee, the investment counsel should provide both advice and executive management, so that the trust is not subject to expense for compensation of officers or directors.

Senator HUGHES. Am I right that you charge now one-half of 1 percent?

Mr. WHITE. That is right.

6. All securities and cash of such company should be entrusted for safekeeping to a national bank or trust company, under appropriate safeguards.

7. The trust should have only one class of stock, all of which should be voting.

8. Without the affirmative vote of the holders of the majority of its capital stock on any given transaction:

(*a*) The trust should have no dealings with any other investment company managed by its investment manager or any affiliated person of such manager.

(*b*) The trust should have no dealings in securities with any officer, director, or partner, or affiliated persons of its investment manager or such investment manager itself.

(*c*) The trust should have no dealings in securities with any officer, director, or affiliated person of the trust.

We think investment counsel-sponsored trusts of the type outlined deserve to be fostered rather than hindered. In his testimony Judge Healy spoke of promoting the dignity of investment trusts. What we ought to develop, he said, is "a group of expert investment trust managers who do not make their profits from originating and distributing types of securities, styled principally for their sales appeal, but from wise and careful management of the funds entrusted to them." Our funds seem to us to fall within Judge Healy's description. The law as passed ought not to interfere with our management of one or more trusts, designed to fit different needs, which can meet the qualifications we have roughly outlined above.

In addition, we do not feel that title I should subject our investment counsel business and our own personal clients to disclosure of their private affairs.

I want to say one more word, and that is that we do not propose to raise our charge to the trust if these stipulations which we have outlined should become effective.

Senator WAGNER. You apparently have had considerable experience in the operation of investment trusts. Let me ask you this question: Do you think that there is justification for a load charge of 10, 12, 14, or 15 percent?

Mr. WHITE. I think there is a limitation somewhere, Mr. Chairman.

Senator WAGNER. Where do you think it is?

Mr. WHITE. That is an awfully hard question to answer. I am not strictly in the business of running an investment trust.

Senator WAGNER. I thought you would have an opinion about that; 8, 9, or 10 percent seemed awfully high, to me. Of course I am not a banker.

Mr. WHITE. I think you are getting into the higher brackets there.

Senator WAGNER. There is one other thing you said. You said that you contemplated organizing an investment trust which was to have a different investment objective——

Mr. WHITE. In this case it would not exactly have a different objective. It would work in a different type of investment, a type which for our purposes can only be handled through a group investment. If you want to know the reason, it is because a company may——

Senator WAGNER. Not unless you are willing to disclose it.

Mr. WHITE. Oh, yes. A company may be a very attractive investment and its shares may have a very limited market, so that if you recommended it to two or three hundred people you would really be locked into it; you would be unable to dispose of it. Whereas with a trust, which would not have to deal with two or three hundred people, it could make small sales on the market and could dispose of it much better.

Senator WAGNER. The reason I asked was because I wondered whether the different objective was that this was to be more of a risk or venture, rather than diversified, safe investments.

Mr. WHITE. No; not necessarily. I think that is a very good reason for lumping a number of securities carrying greater risk.

Senator WAGNER. Except that that is an entirely different type, is it not, from the diversified trust of which you spoke here?

Mr. WHITE. Yes.

Senator WAGNER. In relation to your own trust, in that the shareholder of that kind of trust ought to be pretty definitely informed, if he is going to take a chance, that you are risking his money on a venture. Don't you think so?

Mr. WHITE. Yes. I think the shareholder should know the type of trust he puts his money into, even if after that he leaves it to the discretion of the management.

Senator WAGNER. Yes; but he ought to know what the management contemplates doing with that money?

Mr. WHITE. Yes; I believe he should. There is no question about that.

Senator WAGNER. Thank you very much.

STATEMENT OF ROBERT H. LOOMIS, PRESIDENT, LOOMIS, SAYLES & CO., INC., BOSTON, MASS.

Mr. LOOMIS. My name is Robert H. Loomis and I am president of Loomis, Sayles & Co., Inc., investment counsel, with the head office in Boston. I am also president of the two open-end investment trusts managed by our company.

In view of the fact that our two investment trusts are in most respects substantially the same as those of Scudder, Stevens & Clark, I would like to state that I am in accord with the testimony already submitted by Mr. White of that firm.

In order to avoid repetition I shall confine my remarks particularly to sections 10 and 22 of title I of this bill.

Under section 10 of this bill a majority of the directors of investment trusts must be independent of the management. Under subsection (b), however, an attempt was made to qualify these restrictions, allowing investment advisers to have a majority under certain conditions. During the testimony on this section of the bill, I believe Mr. Schenker remarked that it referred to investment trusts of the type managed by Scudder, Stevens & Clark. I believe he also remarked favorably on this type of trust. It was my impression that he did not intend to interfere with the operation of this type of fund. By his

remarks, he singled out this type as being in a rather unique position. While Mr. Schenker may not have intended to interfere with the operations of such trusts, I would like to explain briefly to the committee the effect that this legislation will have upon the Loomis Sayles Mutual and Loomis Sayles Second funds, which we manage, and which in all important respects are similar to the Scudder, Stevens & Clark investment trusts.

In this bill we are referred to as "investment advisers." We have been furnishing investment advice to individuals on the management of their private funds since 1925. Not long after we started operation, we found that investors of relatively small means—from $1,000 to $20,000—were coming to us and asking if we could not furnish them with investment advice. We found it impractical and impossible to deal with such amounts in a segregated account. Therefore, in order to provide service for these smaller investors, we organized, on November 5, 1929, an investment trust known as the Loomis Sayles Mutual Fund. In April of 1935 we organized another investment trust known as the Loomis Sayles Second Fund. These trusts were managed under the same investment policy as are our private accounts. The trusts, of course, are under the jurisdiction of the S. E. C.

Permit me to emphasize again the fact that these trusts were formed in order to furnish a vehicle of investment for those investors who wished to obtain Loomis-Sayles investment advice. People buying these shares felt that they wanted what we had to offer. They wanted our investment advice and our management. Under the present bill, however, only under certain peculiar conditions can a majority of the directors of these trusts be affiliated with our firm. The shareholders did not buy into these trusts to secure a management group independent of our company. They wanted our management or they would not have bought the shares; and please remember that at any moment, should they decide they no longer were interested in having their money commingled in a fund managed by us, they can get the liquidating value of their shares at any time subject only to a 2 percent redemption charge if the shares are redeemed within 3 years from the date of purchase. This is to discourage trading in them.

According to section 10, a majority of the directors of these trusts can be members of our firm, providing the sales load on the securities issued does not exceed 1 percent and providing the investment adviser does not receive a management fee exceeding one-half of 1 percent. In other words, if we wish to charge over one-half of 1 percent management fee, we are compelled to go outside of our organization for a majority of the board of directors, thus placing the control of the funds in the hands of someone not selected originally by the stockholders.

The investor is prevented by law from investing in an investment trust for which we act as manager-adviser if we feel that 1 percent is a proper fee. Even though he stood in line at the door we could not furnish him what he wanted.

When the stockholder purchases a share in these funds, he knowingly selects as manager for these shares a board of directors composed of members of our organization. Since the stockholders made his selection of directors originally from among the personnel of our organization, he would, under this bill, be forced to elect and reappraise a new board containing an independent majority. He would have to decide

whether or not he wished to accept their management policy or redeem his shares.

At this point I would like to submit two charts to be made a part of the record. The first chart indicates that a share of Loomis Sayles Mutual fund purchased at $75 when the fund started on November 5, 1929, had a liquidating value of $85.23 as of December 31, 1939. Total dividends paid during this period amounted to $59.60.

The second chart shows that a share of Loomis Sayles Second fund purchased at $25 when the fund started on February 6, 1935, had a liquidating value of $36.14 as of December 31, 1939. Total dividends paid during this period amounted to $6.40.

I submit the records of these funds simply to give your committee an idea of what these investors received from the purchase of shares in our funds, which have been completely under our supervision.

I would also like to state that when these shareholders bought these shares they knew that the management fee to be charged on the funds was to be 1 percent annually. The figures just mentioned are after the deduction of this 1 percent annual management fee, plus bank custodian charges, and taxes. There was established, therefore, a contractual relationship between the purchaser of the shares and the managers. We have never charged a "sales load" on these shares. Every dollar of the investor's money has gone directly into the funds. However, we are now to be restricted by this bill to a management fee of only ½ of 1 percent, instead of the agreed 1 percent unless a majority of the board of directors of the trusts are of the so-called independent type.

While we cannot believe that the S. E. C. meant to interfere with the manner in which these trusts are run, nevertheless the bill does do so. Fortunately, the stockholders seem to like the way we run them.

It is only natural that if we wish to continue and prosper as investment counsel, first of all, we would wish to have associated with us men of ability and sound judgment. It is only natural that when we organize and offer to smaller investors an investment trust under our own name, we would wish to have this managed properly and entirely in the interests of the stockholders. I could, perhaps, impressively mention the background of some of the directors of these two trusts. It would appear unnecessary since they represent Loomis, Sayles management, and that is what the investor has selected.

Important also is the fact that there has never been any charge to the trusts for the services of the directors and officers, nor any sales-promotion expenses, nor for secretarial services. As has been pointed out by others, the difficulties that would be imposed by this bill on the securing of competent independent directors, might well result in an additional expense.

Subsection (d) of section 15 requires that a majority of the independent members of the board of directors must approve of the contract with the advisers; so I guess the stockholders in our funds cannot get what they want after all!

Section 22 (d) (2) states that the S. E. C., by rules and regulations, can prohibit restrictions upon the transferability and negotiability of any redeemable security. When the stockholders of our two funds bought these shares, they knew that they could sell them only to the trusts themselves. The shares are redeemable at any time. It was the intention of the management, for the protection of the share-