The Pros and Cons of a Self-Regulatory Organization for Advisers and Mutual Funds

by Tamar Frankel

Congress is seriously considering bills to establish self-regulatory organizations (SROs) for investment advisers (advisers) and investment companies (Funds).[1] These bills would require members of the investment management industry to regulate themselves under the watchful eye of the Securities and Exchange Commission (SEC), similar in approach to the regulation of broker-dealers by the National Association of Securities Dealers, Inc. (NASD) and the securities exchanges.[2] Proposals to establish an SRO for investment advisers have arisen before.[3] However, those proposals did not cover Funds and their advisers.[4]

The pros and cons of SROs for the securities industry have been analyzed and debated for years.[5] While SROs reduce government regulatory costs, this gain is offset by the cost of supervising the SRO, and by the implementation of an added layer of regulation.[6] On the positive side, SROs' regulators, familiar with industry practices, could be more efficient than government employees. Arguably, however, these regulators pose the same problems as any bureaucracy, and could conflict with the objectives of the laws they enforce.[7] The securities industry has favored SROs because they are more flexible and cheaper regulators than the government, and because they insulate the members from direct, often undesirable government intrusion. SROs, such as exchanges, enable the industry as a whole to meet its social responsibilities, oversee the market place, educate the public and the industry regarding the market place, and inculcate industry members with ethical standards.[8]

Arguments against SROs focus on the anti-competitive effect of the SROs' power to discipline members, deny membership, and prohibit members from doing business with non-members.[9] By and large, however, there is a consensus that the stock exchanges and the NASD have been highly successful in achieving numerous goals of divergent constituencies and the public interest.[10]

It is not surprising that the proposal to establish an SRO for the investment management industry has been revived. It is driven mainly by the government's increased cost of regulating the industry.[11] These costs have risen with the recent dramatic growth of the industry in terms of the number of advisers,[12] and assets under their management.[13] Similarly, the number of Funds[14] and the assets under Fund management have increased.[15] Never before have Funds constituted such a significant segment of the financial system. Hence, preventive measures, like examinations, seem more important than ever and pressure is growing to increase the frequency and depth of industry members' examinations.[16] An efficient expert examination system, however, is costly, and would result in an expansion of SEC staff at a time when government personnel are being reduced. On balance, it may be appropriate to establish SROs for non-institutional advisers, but it is inappropriate to establish an SRO for Funds and Fund advisers because such an SRO would require a fundamental change in the Investment Company Act of 1940 (1940 Act).[17] It would be a serious and costly mistake.

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Successful SROs

Notwithstanding the success of SROs in the securities industry and the pressures to establish SROs for members of the investment management industry, such SROs did not develop either for Funds and their advisers or for other, non-institutional advisers. Advisers have organized various trade organizations, *e.g.*, the Investment Company Institute (ICI), but the ICI does not regulate its members. Other advisers have established similar organizations, such as the Investment Counsel Association of America that impose Codes of Ethics on members.[18] In general, however, as the cost of regulation has mounted and the government has proposed SROs for the investment management industry, the industry has resisted the proposals. The question is: why?

Numerous SROs have been flourishing in this country for quite some time. Successful SROs include professional, trade, and manufacturing organizations. An analysis of these SROs can help predict how effective SROs for advisers would be.

> ***There are few reasons for advisers to organize an SRO. Although Fund advisers constitute a more homogeneous group, they share all the other characteristics of advisers that lead to resisting an SRO.***

SROs protect the members' reputation for quality and reliability of services and products by requiring members to acquire and maintain expertise and ethical standards.[19] Because reputation reduces the consumers' costs of ascertaining the quality of what they buy from any member, consumers will pay higher prices for reputable goods and services, and that benefits all members. Similarly, when the financial strength of the industry members is crucial to the group's reputation, SROs may organize a guarantee fund to support members in temporary financial difficulties, and regulate the members to ensure their prudential operations. Second, qualification requirements benefit SRO members by limiting entry to the practice and by reducing competition.[20] Third, SROs benefit specialized professionals by facilitating referral systems among themselves. Fourth, since the practice of most professions and trades requires expertise, members prefer to be governed by their peers, rather than by non-practicing government bureaucrats, and to avoid greater burdens of direct government regulation.[21] Fifth, for traders, SROs facilitate orderly dealings among the members, such as by establishing networks, fairs or exchanges, and effective and inexpensive dispute resolution processes.[22] Thus, banks have organized bank check clearing houses and regulate bank trading on swap exchanges.[23] Securities traders created exchanges voluntarily, decades before the Securities Exchange Act of 1934 recognized their existence. Sixth, SROs offer members low-price services, such as continuous education and information.

It is not clear that investment advisers, including Fund advisers, would enjoy these benefits of SRO regulation. First, advisers are not required to meet any qualification requirements.[24] Prior attempts to impose such requirements have failed mainly because advisers offer diverse services, with various degrees of discretion and control over investment decisions and customers' funds.[25] Therefore, they pose different regulatory problems and uniform rules cannot apply to all of them.[26] Second, and more importantly, advisers do not depend on each other for their business. They conduct no joint ventures and manage customers' portfolios independently of each other. The effect of flawed reputation alone does not seem to provide sufficient incentive for advisers to subject themselves to regulation by competitors. Third, advisers seem to thrive on competition, which will be restricted by imposing qualifications, and establishing SROs for them.[27] Fourth, advisers compete by distinct management techniques, talented investment managers, various fee structures, and sometimes lower fees and costs. Scrutiny of their books and records by an SRO may reveal confidential information that would hurt their competitive advantage. Thus, there are few reasons for advisers to organize an SRO. Although Fund advisers constitute a more homogeneous group, they share all the other characteristics of advisers that lead to resisting an SRO.

An SRO Would Fundamentally Alter the Regulatory Scheme Under the 1940 Act

Funds are institutional intermediaries[28]—pooling investors-advisees' money and offering efficient and expert management on a fully discretionary basis. The 1940 Act resembles the regulation of banks, pension funds, and insurance companies far more than the regulation of market intermediaries, such as broker-dealers. That is because investors in Funds are exposed to somewhat different, and usually greater, risks of loss from mismanagement of their money than are investors from broker-dealers' actions, and because investors' controls over the Funds' managements are far weaker than their controls over their broker-dealers.[29]

The enforcement of the Act's provisions and its adjustment is vested in the SEC, the courts, and the internal governance mechanisms. In contrast, broker-dealers are not regulated with respect to their internal governance, and their

relationships to customers are governed by the common law. The rules of the NASD and the SEC strengthen the common-law investors' protective regime, and reduce the investors' individual enforcement costs.[30]

There is evidence to suggest that SEC enforcement provides investors with stronger protections than SRO regulation.[31] In my view, the proposed SRO for Funds would substitute a weaker enforcement regime for the SEC's stronger regime. That is in contrast to the NASD, which substitutes a stronger and less costly investor protection regime for the common-law regime. In my view, an SRO would weaken investors' protections provided by the 1940 Act.

> ***This may be the time to signal the markets that the government stands ready to strengthen the Funds' regulation, as it has done in the past so successfully, rather than to introduce self-regulation.***

If an industry is flourishing under a particular regulatory system, which the Fund industry is,[32] there should be a presumption in favor of maintaining the regulatory status quo, and no fundamental changes should be introduced without a serious investigation into alternatives. In this case, there may be reasons to maintain SEC regulation. The existing regulation of Funds does not seem "broke" and so, need not be "fixed."[33] The Fund industry's success, however, is based upon broad investor confidence, and this confidence is even more crucial today. The growth of Funds has increased their visibility and public scrutiny concerning, for example, the compensation of Fund advisers, the performance of Fund independent directors, the performance of particular Fund managers, and—above all—their commitment to investors' interests before their own. Investors may withdraw their money not only if securities prices fall, and not only if they suspect dishonesty and manipulation by Fund management, but also if they believe they are unfairly treated, and if advisers take advantage of them. Such withdrawals can have a domino effect on Funds of the same type, on Funds managed by the same adviser, and on the secondary markets in the securities in which these Funds have invested.[34] Further, Funds are the only substantial segment of the financial system without government guarantees: they have no equivalent to the Securities Investor Protection Corporation, the Federal Deposit Insurance Corporation, or the Pension Board Guarantee Corporation. The Fund industry's success in maintaining the public's confidence and scandal free reputation is due largely to its strict compliance with the 1940 Act and to the SEC's diligent enforcement of the Act—the only form of government support the industry receives.

Additionally, the risks and consequences of losing public confidence may be greater today than they have been in the past. During the past twenty years, the SEC has allowed advisers and sponsors greater flexibility in structuring Funds and advisory fees. Overall, this greater flexibility has helped growth and innovation in the industry, but it also has permitted greater complexity, which has increased the costs of market and government monitoring. Public perception about Fund management and the public's confidence in the Funds can be affected by the new entrants, such as banks, into the Fund business. In their core business operation, these institutions are usually subject to quite different, and in many respects more lax, conflicts of interest regulation than that imposed by the 1940 Act. New entrants unfamiliar with the 1940 Act may make mistakes or innocently confuse the public. These mistakes and confusing facts, when publicized, could erode trust in the Funds involved.[35]

Thus, while the 1940 Act has served the industry and the public well, Funds are more vulnerable today to loss of public confidence than ever before. This may be the time to signal the markets that the *government* stands ready to strengthen the Funds' regulation, as it has done in the past so successfully, rather than to introduce *self-regulation*—a different, untested scheme of regulation that signals reduced regulatory supervision.

Other Options to Redress Possible Problems in the Fund Industry

If the current regulation of Funds is deficient, solutions other than an SRO could be far more advantageous to investors, the industry and the SEC. The main impetus for creating an SRO seems to be the need for more examinations of advisers and Funds, and the impracticality of government funding the cost of such examinations. Yet, alternatives to SROs should be explored. SEC examinations may be revised to provide more efficient and focused government inspections;[36] new technology could be introduced, similar to the SEC's controls of the securities exchanges.[37] The SEC could work with the regulators of new entrants into the industry, such as the bank regulators, and utilize their examiners to reduce the SEC's needs for examiners and to avoid duplication. Certified public accountants or other qualified professionals expert in evaluating portfolio risks and internal controls could be required to perform closer audits of the Funds and their advisers, especially in evaluating legal compliance.[38] The states may be called upon to regulate small advisers.[39]

To the extent that more examiners are necessary to regulate Funds, perhaps the costs of such examiners could

be charged to the institution that is examined or to the members of the industry as a whole (through a fund to which they all contribute by certain measures). These alternatives should be thoroughly studied before introducing a drastic and fundamental change in the regulation of the Fund industry.

Conclusion

SROs for non-institutional advisers may be advantageous for investors and the industry. SROs can absorb some of the government's costs of regulating non-discretionary advisers. Required minimum qualifications may give the added incentive necessary for advisers to organize one or more effective SROs. If the SROs induce advisers to maintain high quality services and integrity, and at the same time lower government costs, these benefits may offset the reduced competition that will result from these organizations.

On the other hand, a fundamental change in the regulatory system of Funds should be approached with the utmost caution; such a change should be introduced if, and only if, after serious study, less drastic alternatives are not feasible. The idea of an SRO for Funds and their advisers is innovative; in theory it may work even better than the SEC's inspection program. But innovations can become the bane of financial institutions. Such regulatory changes are risky because we cannot predict all their direct or side effects.[40] If an SRO of Funds were to prove ineffective or deleterious, a successful segment of the financial system that provides satisfactory services to millions of Americans may be adversely affected.

NOTES

1. *Oversight Hearings on the Mutual Fund Industry, On the Importance of Mutual Funds to the Economy and to Investors and to Look at the Adequacy of Current Federal Oversight Over the Industry and the Possible Need for Legislative or Regulatory Changes, Hearing Before the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs*, 103d Cong., 1st Sess., S. Hrg. 103-382 (Nov. 10, 1993) [hereinafter the *1993 Hearings*] (". . . in general, an SRO has proven to be one of the most effective ways of monitoring a growing complex of financial services in our society, and it's a way that I am seriously considering with respect to investment companies and even considering more seriously with respect to investment advisers").

The House bill, Investment Adviser Regulatory Enhancement and Disclosure Act of 1993 (H.R. 578; passed the House in May 4, 1993). It: (i) authorizes the SEC to collect registration fees from advisers, to suspend advisers' registration for failure to pay fees, and to use the fees to defray specific costs of regulating advisers; (ii) authorizes the SEC to designate SROs to examine, to discipline for non-compliance, and to collect examination fees from members and affiliates (except affiliates primarily engaged in investment advisory activities, and thrifts); (iii) directs the SEC to arrange for inspecting advisers and to survey and report to Congress on advisers that failed to register, to establish a toll-free number for inquiries concerning advisers, and to promulgate investor protection rules, setting bonds for certain advisers to cover larceny and embezzlement; (iv) disqualifies certain persons (convicted of a felony etc.) from acting as advisers; (v) prohibits advisers from conducting certain transactions, including giving unsuitable advice and disclosing confidential client's information; and (vi) requires advisers to disclose certain information to clients, including referral fee arrangements. *See Bill Tracking Report*, H.R. 578, 103d Cong. 1st Sess., *available in* LEXIS, Congressional Research Service.

The Senate bill, Investment Adviser Oversight Act of 1993 (S. 423), passed the Senate on Nov. 20, 1993. It is more limited. It amends the Investment Advisers Act of 1940 [hereinafter the *Advisers Act*] authorizing the SEC to: (i) establish registration fees and filing fees for other applications and papers that advisers must file (the fees will cover enhanced efforts to register all persons to whom the Act's registration requirement applies, and to regulate advisers); (ii) suspend advisers' registration on failure to pay the fees and to reinstate upon payment; (iii) require registered advisers to be bonded against larceny and embezzlement, with certain limits; and (iv) require the SEC to study the impact of such bonding on the competitive position of small advisers and those outside urban areas. *See Bill Tracking Report*, S. 423, 103d Cong. 1st Sess., *available in* LEXIS, Congressional Research Service; *Congress To Address SEC Self-Funding, Investment Advisers, Financial Fraud*, 1994 Daily Executive Rep. 10 (BNA) (Jan. 14, 1994) (Senator Gramm opposed the legislation as an additional "tax" on advisers on an item which the SEC does not consider a priority).

The two bills will be brought before a Conference Committee for reconciliation. The major differences in the bills involve disclosure and suitability requirements. In the meantime, the SEC has proposed a rule imposing on advisers a suitability requirement under §206(4) of the Investment Advisers Act of 1940, which will remove from the bills one of these issues. *See* Suitability of Investment Advice Provided by Investment Advisers, 59 Fed. Reg. 13464, SEC Release No. IA-1406 (to be codified at 17 C.F.R. pt. 275) (proposed March 22, 1994).

2. *SEC Reconsidering Adviser SRO, Urges Passage of Pending House Bill*, 22 Sec. Reg. & L. Rep. 1060 (BNA) (July 20, 1990); *SEC to Ask Congress For Legislation To Permit the Creation of Advisers' SROs*, 21 Sec. Reg. & L. Rep. 871 (June 16, 1989) [hereinafter the *1989 Proposal*] (SEC approved a plan for establishing an SRO for registered advisers, except broker-dealers, banks, certified public accountants, and advisers who only advise Funds. The SRO would set qualifications and business practice standards and, most importantly, conduct examinations of the members. Membership would be mandatory. The NASD could be one possible SRO for advisers' inspections and registrations. Other SROs could also be organized); *Concept of Utilizing Private Entities in Investment Company Examinations and Imposing Examination Fees*, 48 Fed. Reg. 8485, SEC Release No. IC-13044, (to be codified at 17 C.F.R. pt. 270) (proposed Feb. 23, 1983) [hereinafter the *1983 Pro-*

posal]; *See also* 1 *Tamar Frankel*, The Regulation of Money Managers §10, at 37-38 (1978); *Id.* at 13-14 (Supp. 1993).

3. On SROs for the securities industry, *see* 6 Louis Loss & Joel Seligman, Securities Regulation 2789-2815 (3d ed. 1990).

4. Explicitly excluded from the *1989 Proposal*, *supra* note 2, are "those advisory activities of a registered [Fund Adviser] undertaken pursuant to a written contract to an investment company registered or being registered under the Investment Company Act of 1940." *See* Self Regulatory Organizations: Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Postponement of the Effectiveness of the CIP Fee Schedule, SEC Release No. 34-27005, *available in* LEXIS, SEC file (July 7, 1989). In the *1983 Proposal*, *supra* note 2, at 8487, the staff stated: "Although the creation of one or more self-regulatory organizations for investment companies that have similarly broad functions is a matter which may merit consideration in the future, the development of a system for investment companies involving self-regulatory organizations empowered under the Investment Company Act of 1940 to set business practice standards and discipline members would, even assuming that support for this type of self-regulatory system existed, present complex issues that could take significantly longer to resolve than those raised by the proposal discussed herein."

5. Sam Scott Miller, *Self Regulation of the Securities Markets: A Critical Examination*, 42 Wash. & Lee L. Rev. 853, 854-56 (1985) and authorities cited therein.

6. *SEC Reconsidering Adviser SRO, Urges Passage of Pending House Bill*, *supra* note 2 (quoting Commissioner Schapiro who testified before the House Energy & Commerce Telecommunications and Finance Subcommittee, that with respect to advisers, "direct regulation [by the SEC] is clearly preferable and far more cost effective").

7. *See* Miller, *supra* note 5, at 879 (1985) (explaining how the exchanges, particularly the NYSE and ASE, have fought to keep their listed companies and thus have retarded the development of a national market system).

8. *Id.* at 855-856.

9. *See Silver v. New York Stock Exchange*, 373 U.S. 341 (1963); Marianne K. Smythe, *Government Supervised Self-Regulation in the Securities Industry and the Antitrust Laws: Suggestions for an Accommodation*, 62 N.C. L. Rev. 475 (1984).

10. *1993 Hearings*, *supra* note 1, at 12 (statement of Arthur J. Levitt, Chairman, SEC) ("[i]n general, an SRO has proven to be one of the most effective ways of monitoring a growing complex of financial services in our society . . .").

11. *1993 Hearings*, *supra* note 1, at 8-9, 11 (statement of Arthur J. Levitt, Chairman, SEC) (stating the realities of SEC budgetary and staffing constraints in the face of a growing mutual fund market); *id.* at 22 (implying that SEC self-funding is one of the reasons for advocating the establishment of an SRO).

12. *SEC to Ask Congress for Legislation to Permit Creation of Advisers' SROs*, *supra* note 2 (noting the number of registered investment advisers has increased from around 4,580 in October 1980 to 15,106 as of April 1989).

13. *Id.* (noting the value of assets under management has grown from $440 billion in 1980 to $4.6 trillion as of 1989).

14. *1993 Hearings* at 85-92 (statement of Mathew P. Fink, President, Investment Company Institute) (describing the growth of the mutual fund industry and the reasons for its growth).

15. *See October Mutual Fund Sales Total 45.5 Billion*, Investment Co. Inst. PR Newswire, Nov. 29, 1993, *available in* LEXIS, Nexis Library, PRNEWS file (as of the end of October, 1993, the assets of all mutual funds totaled $1,975.7 billion).

16. Concern about the paucity of examinations of investment companies is not new. *See* the *1983 Proposal*, *supra* note 2, at 8486 (proposing the establishment of an SRO to facilitate increased rate of examinations of investment advisers); Robert McGough, John R. Emshwiller & Sara Calian, *Deliberate Mispricing at Fidelity Highlights Lax Controls on Quotes*, Wall St. J., June 23, 1994, at A1, col. 1, A6, col. 1 (expressing concern about inaccurate pricing of open-end investment company shares and calling for examinations to monitor the problem).

17. Investment Company Act of 1940, 15 U.S.C. §80a-1 to -65.

18. *See Memorandum from Linda M. Frank, Investment Counsel Association of America, Inc., to Member Firms* (June 28, 1978) (attachment letter concerning proposed regulation about the prudence standard under ERISA). The Association was established in 1937, and received in the 1940 Act protection of the title "investment counsel" for its members, whose main business is to render investment advice. *See* Investment Advisers Act of 1940, §208(c), 15 U.S.C. §80b-8(c). *See also* Association of Certified Financial Planners, which imposes a Code of Ethical Conduct on its members and enforces the Code by suspending and rescinding membership.

19. For example, the SRO for the accounting profession has recently instituted a program in which member firms would examine and review each others' practices and internal controls. *See* Lee Breton, *Accountants Vote Required Program of Self Regulation*, Wall St. J., Jan. 14, 1988, at 12, col. 5.

20. See *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963); Smythe, *supra* note 9.

21. *See* Miller, *supra* note 5, at 855-56.

22. *See, e.g.*, Lisa Bernstein, *Opting Out Of The Legal System: Extralegal Contractual Relations In The Diamond Industry*, 21 J. Legal Stud., 115, 124 (1992).

23. *See, e.g.*, David G. Oedel, *Private Interbank Discipline*, 16 Harv. J.L. & Pub. Pol'y 327, 353-56, 381-95 (1993).

24. All advisers, with few exceptions, must register under the Advisers Act. Funds must register under §§7 and 8 of the Investment Company Act of 1940. The registration, however, does not impose educational or financial qualification requirements on either the Fund adviser or the board members of the Funds. Further, the Advisers Act requires no qualifications of advisers, but only that advisers provide clients with a brochure describing their education and experience.

25. Personal and institutional advice can be given alone, or in conjunction with other services, such as brokerage and investment banking. Personalized advice can be offered with financial planning, which combines sales of securities and other investments. Advisers differ in the amount of

assets under management from over $60 billion to a few thousand.

26. *Note, Financial Planning: Is it Time For A Self Regulatory Organization?* 53 Brook. L. Rev. 143 (1987) (describing a proposed SRO for financial planners); *id.*, at 184-85 (Commissioner Cox's argument that financial planners lack common interests, required for a successful SRO).

27. *See Cox Says Commission Should Reject Federal Licensing of Financial Planners*, 16 Sec. Reg. & L. Rep. 1726 (Nov. 2, 1984).

28. For the purpose of analysis I divide the industry into personal advisers and institutional advisers. Personal advisers offer many levels of personalized services employing various degrees of discretion. Any advisory service becomes institutional when (i) the service is fully discretionary, and (ii) nonpersonal and (iii) when advisees' money is pooled with the money of others and (iv) advisees acquire an undivided interest in the pool.

29. In 1940, Congress determined that disclosure alone is not a sufficiently effective regulatory tool for investment companies. 1 Frankel, *supra* note 2, at 31 n. 97 (1978). *See* Investment Company Act of 1940, §1(b), 15 U.S.C. §80a-1(b) (1981) (describing the problems addressed by the Act).

30. *See generally* 6 Loss & Seligman, *supra* note 3, at 2787-2816 (3d ed. 1990).

31. Miller, *supra* note 5, at 885 (regulators and self regulators seek different objectives. "The government aims at substituting a regulatory scheme as efficacious as that which it would provide directly." The self regulators have something else in mind, such as cheaper and more flexible regulation and insulation from government involvement).

32. *1993 Hearings*, *supra* note 1, at 2 (opening statement by Senator Christopher J. Dodd) ("this industry has been an extraordinary success story"); *id.* at 70-71 (statement of James S. Riepe, Managing Director, T. Rowe Price Associates, Inc.) (asserting mutual funds regulation is stringent but does not prevent innovation; the funds "... are the success story of the financial services industry because ... [they] have garnered investors confidence").

33. *1993 Hearings*, *supra* note 1, at 93-94 (statement of Mathew P. Fink, President, Investment Company Institute) (attributing a "vital role" to the "strict regulatory scheme to which mutual funds are subject," and stating that "The Institute believes that the regulatory scheme to which mutual funds are subject is working well").

34. Arguably, Funds can act to reduce sales pressure during a downtrend of market prices. *1993 Hearings*, *supra* note 1, at 92 (statement of Mathew Fink, President, Investment Company Institute).

35. *See* Karen Talley & Andrea Cope, *SEC Survey: Many People Don't Grasp Fund Risks*, Am. Banker, Nov. 12, 1993, at 1, col. 3, 13, col. 2, 3.

36. *1993 Hearings*, *supra* note 1, at 7, 11-12 (statement of Arthur J. Levitt, Chairman, SEC) (the Funds are "willing to consider ... internal audits, enforcing compliance structures at each of the funds, and a variety of other things as part of a package that may diminish the need for an SRO"); *id.*, at 35 (statement of Mathew P. Fink, President, Investment Company Institute) (strongly supporting "congressional efforts to provide the SEC with greater resources to oversee the industry in the years ahead" and use fees that are paid by mutual funds to regulate mutual funds); *see* Sheldon Yett, *Fund Industry Fears SRO Creation*, 25 Wall St. Letter 46, at 1 (Inst. Investor Inc.) (Nov. 22, 1993) (the industry "is quietly promoting as a more palatable initiative than the creation of an SRO . . . an enhanced role for investment company compliance officers ... [and] expanding ... internal audit responsibilities").

37. It may well be that the recent problem regarding mispricing of Fund shares could be addressed through an application of available technology.

38. Timely evaluations of current price of portfolios. *See* McGough, Emshwiller & Calian, *supra* note 16 at A1, col. 1, A6 col. 1.

39. *Securities, Roberts Says Industry Should Act to Ban Fund Managers' Personal Trading*, 1994 Daily Executive Rep. C43, at C43 (BNA) (March 7, 1994) (Commissioner Roberts, who supports the establishment of SROs for investment advisers, also recommended such state involvement).

40. Interestingly, serious questions have been raised recently about the Investment Company Act of 1940, §17(j), which allows funds to establish internal controls and regulate their employees and managers, mainly on activities such as insider trading, appropriations of Funds' investment opportunities, and trading on the effects of the Funds' own purchases and sales. Recent concerns about Fund managers' trading for their own account raises serious questions about the adequacy of such internal controls. James M. Gomez & Jonathan Weber, *End Near in ICN Battle; But Issues Raised in the Squabble Will Persist*, L.A. Times, Jan. 31, 1994, at D1, col. 2; Geoffrey Smith, *Mutual Funds: The Rules on Insider Trading, Please*, Business Week, Jan. 31, 1994, at 60; *Mutual Fund Panel to Study Questionable Practices*, The Reuter Bus. Rep., (Reuters Ltd.)(Feb. 16, 1994) (the industry formed an advisory panel to consider more stringent codes of ethics).