

Mr. WILLIAMSON: I think it is important to know what your mutual fund is. A few mutual funds are organized legally as trusts. I think this is perhaps uncommon, although on the coast there are some funds organized as trusts; they probably avoid all the company law problems that other firms have run into, although at the same time I think they have avoided some tax benefits that the other companies enjoy. I believe most of us think in non-legal terms of a mutual fund as a sort of trust or partnership, but the difficulty is you have to come back to the Companies Act and this is where we have run into trouble in the past. The Companies Act really does not take care of mutual funds. I would hope the act itself could be amended to provide what is needed for a mutual fund without working out these rather unorthodox arrangements which I believe never have been challenged in the courts, but which might be.

Mr. GELBER: When you say trust or partnership, it seems to me trusts or partnerships are radically different concepts.

Mr. WILLIAMSON: I think the legal concept of a trust, a partnership or a corporation is radically different. This is why it is important to say what you have for any particular fund.

Mr. GELBER: If the law recognizes a mutual fund as simply a partnership, would that not simplify the problem?

Mr. GRAY: No. You would not have the benefit of limited liabilities.

The CHAIRMAN: Would you please be courteous enough to address the witness through the Chair?

Mr. GELBER: If we viewed mutual funds as a partnership, it would simplify many of the problems.

Mr. WILLIAMSON: I think it would require the drafting of a whole set of laws for these partnership mutual funds and others to take care of the limited liability. The taxing consequence would have to be thought of fairly carefully. They would be quite different today from the tax consequences of a corporate mutual fund and quite different, perhaps, from the tax consequences of a trust mutual fund. As the Income Tax Act now reads, there are some advantages in being able to use the corporate form for a mutual fund. There are some choices which would not be available if the fund were a trust or a partnership. I think this would require a lot of legislative drafting, but it could be done.

Mr. GELBER: I understand that many funds prohibit the hypothecation of assets for borrowing. In that event the fund simply remains a mutual investment instrument.

Mr. WILLIAMSON: Yes, I think this is true.

Mr. GELBER: And the problems that are mentioned about limited liabilities therefore disappear.

Mr. WILLIAMSON: Well, I am not sure. I suppose in most cases this would be a very small problem. Today some mutual funds have fairly substantial liabilities owed to brokers, for example. I think almost all these funds now are in a position that no shareholders, even if they had limited liabilities, would be very much worried about this. The day might come when they would be. I think it would be possible to construct the fund as a limited partnership to take care of the limited liability.

Mr. GELBER: A person who wanted to be free of a liability could invest in an investment trust?

Mr. WILLIAMSON: Are you thinking of a legal trust?

Mr. GELBER: A closed end trust. I would like to come back to the question of the tax complication and whether the 20 per cent benefit would be available, and whether this is clear. Does a mutual fund not have to declare whether or